Feb 28. 829.

2-5 Reversed

Jas Miller

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 703.

HERMAN LIEB, CLERK, AND HENRY B. MILLER, COLLECTOR, OF COOK COUNTY, ET AL., APPELLANTS,

vs.

HENRY P. KIDDER AND DANIEL O. STONE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 13, 1875.

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1 Pleas in the circuit court of the United States of America in and for the northern district of Illinois, before the Hon. Thomas Drummond, circuit judge for the seventh judicial circuit of the United States, and on Friday the sixth day of August, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independance of the United States the one hundredth year.

WM. H. BRADLEY, *Clerk.*

HENRY P. KIDDER AND DANIEL P. STONE
v.
THE CHICAGO, BURLINGTON AND QUINCY Railroad Company, Herman Lieb, clerk, and H. B. Miller, collector of Cook County; J. J. Cole, clerk, and Lewis C. Stover, treasurer and collector of Du Page County; John C. Sherwin, clerk, and Henry C. Paddock, collector of Kane County; Jeremiah Everts, clerk, and T. S. Serrine, collector of Kendall County; C. M. Conrad, clerk, and Robert Hampton, collector of De Kalb County; James A. Hawley, clerk, and Josiah Little, collector of Lee County; Hubert A. McCaleb, clerk, and Samuel H. Raymond, collector of La Salle County; Melvin J. Keith, clerk, and Samuel Edwards, collector of Bureau County; F. G. Wilton, clerk, and
2 P. H. Beveridge, collector of Henry County; John S. Winter, clerk, and Edwin T. Ellet, collector of Knox County; William H. Sexton, clerk, and David D. Parry, collector of Warren County; David C. Hanna, clerk, and George Bell, sheriff and ex-officio collector of Henderson County; J. C. Warley, clerk, and Job Walker, collector of Fulton County; Allen L. Sparks, clerk, and Anthony Thornton, collector of McDonough County; George J. Rogers, clerk, and Peter Frey, collector of Hancock County; Willis Hazlewood, clerk, and Edwin Cleveland, collector of Adams County; D. J. Walker, clerk, and Orlando Brown, treasurer of Stark County; John McClure, clerk, and Isaac Taylor, collector of Peoria County; John C. Scripps, clerk, and Edward D. Wells, collector of Schuyler County; C. F. Durston, clerk, and William N. Graham, collector of Mercer County; and Edward W. Payne, clerk, and W. H. Thatcher, collector of Whiteside County in the State of Illinois. } In chancery.

Be it remembered that on the 8th day of January, in the year of our Lord one thousand eight hundred and seventy-five, said complainant, by Dexter & Smith, their solicitors, filed in the office of the clerk of the circuit court of the United States for the northern district of
3 Illinois their bill of complaint against said defendants, together

with a bond for costs, which said bond for costs and said bill of complaint are in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, December term, A. D. 1874.

HENRY P. KIDDER ET AL.
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD Co. et al. } In.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiffs of any costs ordered or adjudged to be paid by them, hereby agree and stipulate that execution may issue against my property for any costs taxed against them.

Dated this eighth day of January, A. D. 1875.

WIRT DEXTER.

(Endorsed:) Filed Jan'y 8th, 1875. Wm. H. Bradley, clerk.

4 *Bill of complaint.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To the honorable the judges of the circuit court of the United States in and for the said district, in chancery sitting:

Henry P. Kidder and Daniel P. Stone, who are citizens of the State of Massachusetts, bring this their bill of complaint against the Chicago, Burlington and Quincy Railroad Company, a corporation created by and organized under the laws of the State of Illinois, and transacting business in said State, and Herman Lieb, clerk, and H. B. Miller, collector of Cook County; J. J. Cole, clerk, and Lewis C. Stover, treasurer and collector of Du Page County; John C. Sherwin, clerk, and Henry C. Paddock, collector of Kane County; Jeremiah Evarts, clerk, and T. S. Serrine, collector of Kendall County; C. M. Conrad, clerk, and Robert Hampton, collector of De Kalb County; James A. Hawley, clerk, and Josiah Little, collector of Lee County; Hubert A. McCaleb, clerk, and Samuel W. Raymond, collector of La Salle County; Melvin J. Keith, clerk, and Samuel Edwards, collector of Bureau County; F. G. Wilton, clerk, and P. H. Beveridge, collector of Henry County; John S. Winter, clerk, and Edwin T. Ellet, collector of Knox County; William H. Sexton, clerk, and David D. Parry, collector of Warren County; David C. Hanna, clerk, and George Bell, sheriff and ex-officio collector of Henderson County; J. C. Warley, clerk, and Job Walker, collector of Fulton County; Allen L. Sparks, clerk, and Anthony Thornton, collector of McDonough County; George J. Rogers, clerk, and Peter Frey, collector of Hancock County; and Willis Hazlewood, clerk, and Edwin
5 Cleveland, collector of Adams County; D. J. Walker, clerk, and Orlando Brown, treasurer of Stark County; John McClure, clerk, and Isaac Taylor, collector of Peoria County; John C. Scripps, clerk,

and Edward D. Wells, collector of Schuyler County; C. F. Durstan, clerk, and William N. Graham, collector of Mercer County; and Edward W. Payne, clerk, and W. H. Thacher, collector of Whiteside County, citizens of the State of Illinois: whereupon your orators, humbly complaining, respectfully represent to your honors that the said Chicago, Burlington & Quincy Railroad Company is a corporation created, existing, and doing business in the State of Illinois, under and by virtue of the laws of said State, and a citizen and resident of said State, and is the owner of a railroad in the said State and of the property and appurtenances thereto belonging and therewith connected, known and designated as the Chicago, Burlington & Quincy Railroad, which said railroad extends from the city of Chicago, in Cook County, Illinois, to Galesburg, in the county of Knox, in the State of Illinois, and from thence southwesterly to the city of Quincy, in Adams County, Illinois, and westerly to a point on the eastern shore of the Mississippi River, in Henderson County, Illinois, opposite the city of Burlington, in the State of Iowa, and eastwardly to the city of Peoria, Illinois, and of other short lines, amounting in all to about four hundred miles of main track, and upon which said railroad, and upon all the property pertaining thereto and connected therewith, in the State of Illinois, which is owned and possessed by said corporation, it is subject to taxation in the several counties of said State into and through which its said railroad enters or passes.

That heretofore and on the 12th day of February, 1849, the general assembly of the State of Illinois passed an act entitled "An act granting a charter to the Aurora Branch Railroad Company," which was accepted by said company, a copy of which is hereto attached and marked "Exhibit 1," and made a part of this bill of complaint.

That on the 22d day of June, 1852, the general assembly of the State of Illinois passed an act entitled "An act to amend the charter of the Aurora Branch Railroad Company," by which, among other things, it was provided that the name of said company should be changed to
6 that of the Chicago & Aurora Railroad Company, a copy of which is hereto attached and made a part of this bill of complaint, marked "Exhibit 2."

That on the 28th day of February, 1854, the general assembly of the State of Illinois passed an act entitled "An act to amend the charter of the Chicago & Aurora Railroad Company," by which it was provided, among other things, that the name of said company should be changed to that of the Chicago & Southwestern Railroad Company, and that the said company and the Central Military Tract Railroad Company, the Northern Cross Railroad Company and the Peoria & Oquawka Railroad Company, or any two or more of said companies, should be and were authorized to consolidate their stocks so as to form one stock and one company, upon such terms as might be agreed upon, and might assume the name of either as a common name, or might adopt such new name as the consolidated company should elect to adopt, upon filing with the secretary of state a certificate, under the corporate seal of the company, of the name selected and its adoption, and might elect the charter of either of said companies thus agreeing to consolidate as the charter of the consolidated company, certifying and filing a certificate of said election in like manner, and that it should also be competent for either of said companies to lease or sell or dispose of any part of its road to either of the others, with the right to complete, maintain, operate, and manage the same upon such terms and conditions as might be agreed upon between them, a copy of which said act is hereto at-

tached and made a part of this bill of complaint, and marked "Exhibit 3."

That on the 14th day of February, 1855, the general assembly of the State of Illinois passed an act entitled "An act to amend an act entitled 'An act to amend the charter of the Chicago & Aurora Railroad Company,' approved February 28th, 1854," whereby it was provided, among other things, that the corporate name of the said company should be changed to the Chicago, Burlington & Quincy Railroad Company, a copy of which act is hereto attached and marked "Exhibit 4," and made a part of this bill of complaint.

That on the 15th day of February, 1851, the general assembly of the State of Illinois passed an act entitled "An act to incorporate the
7 Central Military Tract Railroad Company," a copy of which is hereto attached and marked "Exhibit 5," and made a part of this bill of complaint.

That on the 19th day of June, 1852, the general assembly of the State of Illinois passed an act entitled "An act to amend an act entitled 'An act to incorporate the Central Military Tract Railroad Company,'" a copy of which is hereto attached and marked as "Exhibit 6," and made a part of this bill of complaint.

That on the 28th day of February, 1854, the general assembly of the State of Illinois passed an act entitled "An act to enable railroad and plank-road companies to consolidate their stock," whereby it was provided, among other things, that all railroad companies then organized or thereafter to be organized, which then had, or thereafter might have, their termini fixed by law, should be authorized and empowered to consolidate their property and stock with each other, and that the consolidated company should have all the powers, franchises, and immunities which the said respective companies had by virtue of their respective charters before such consolidation passed within the State of Illinois, provided that each consolidated company should file for record in the office of the secretary of the State a copy of their said articles of consolidation, evidenced by the signature of the presiding officer of each of said companies and the corporate seal thereof, a copy of which act is hereto attached and marked as "Exhibit 7," and made a part of this bill of complaint.

That afterwards, and on, to wit, the 9th day of July, 1856, the Chicago, Burlington and Quincy Railroad Company, and the Central Military Tract Railroad Company entered into a contract of consolidation, and the consolidated company assumed the name of the Chicago, Burlington and Quincy Railroad Company, which contract was afterwards, and on, to wit, the 14th day of July, 1856, filed for record in the office of the secretary of state of Illinois, a copy of which said agreement is hereto attached and marked as "Exhibit 8," and made a part of this bill of complaint, properly certified according to law.

That on the 10th day of February, 1849, the general assembly
8 of the State of Illinois passed an act entitled "An act to incorporate the Northern Cross Railroad Company," whereby it was provided, among other things, that the directors should have the same power and authority, and perform the same duties, and be governed by the same rules, and that the company should enjoy and exercise all and singular the powers, rights, authorities, privileges, and immunities conferred upon the Alton and Sangamon Railroad Company, by an act entitled "An act to construct a railroad from Alton, in Madison County, to Springfield, in Sangamon County," approved February 27th, 1847, a copy of which is hereto attached and marked as "Exhibit 9," and made a part of this bill of complaint.

That the general assembly of the State of Illinois, on the 1st day of February, 1851, passed an act entitled "An act supplemental to an act entitled 'An act to incorporate the Northern Cross Railroad Company,'" approved February 10th, 1849, whereby it was, among other things, provided that said company should be authorized and empowered to locate, construct, establish, and finally complete and thereafter use a lateral branch of said Northern Cross Railroad, commencing at any convenient point of said Northern Cross Railroad, in the county of Adams, and running thence on the most eligible, beneficial, expedient, and practicable route through the military tract, etc., a copy of which is hereto attached, marked as "Exhibit 10," and made a part of this bill of complaint.

That on the 11th day of June, 1852, the general assembly of the State of Illinois passed an act entitled "An act supplemental to an act entitled 'An act to incorporate the Northern Cross Railroad Company,'" approved February 10th, 1849, a copy of which is hereto attached and marked as "Exhibit 11," and made a part of this bill of complaint.

That on the 21st day of June, 1852, the general assembly of the State of Illinois passed an act entitled "An act to amend the first section of an act supplemental to an act to incorporate the Northern Cross Railroad Company, and to increase the number of directors of said company," a copy of which is hereto attached and marked as "Exhibit 12," and made a part of this bill of complaint.

That on the 10th day of February, 1851, the general assembly
9 of the State of Illinois passed an act entitled "An act to change the name and amend the charter of the Northern Cross Railroad Company," whereby it was, among other things, provided that the corporate name of said company should be and was thereby changed to the Quincy and Chicago Railroad Company, a copy of which is hereto attached, marked "Exhibit 13," and made a part of this bill of complaint.

That the Northern Cross Railroad Company, for the purpose of building and equipping its road, borrowed large sums of money, and executed a mortgage upon its railroad and property and charter, which was afterwards foreclosed in chancery, and the said Chicago, Burlington & Quincy Railroad Company became the purchaser of said railroad and its appurtenances, and of the property and franchises of the said Quincy & Chicago Railroad Company under said mortgage, and all the rights and privileges of said company were afterwards, and on, to wit, the 30th day of July, 1865, in pursuance of said sale, conveyed by the master in chancery of the county of Knox, in the State of Illinois, to the said Chicago, Burlington & Quincy Railroad Company, whereby the said Chicago, Burlington & Quincy Railroad Company became the owner of the Quincy & Chicago Railroad, and incorporated the same with, and made it a part of, the Chicago, Burlington & Quincy Railroad; that all the franchises, rights, powers, and privileges granted to the several companies above named have been transferred to and vested in the Chicago, Burlington & Quincy Railroad Company, and are now held and possessed by it, and are contracts between the State of Illinois and the Chicago, Burlington & Quincy Railroad Company, now existing and in force, and under which said road is now being run and operated.

Your orators further state that the capital stock of said Chicago, Burlington and Quincy Railroad Company was fixed by law at the sum of one hundred thousand dollars, ($100,000,) with the privilege and authority to said corporation of increasing the same, from time to time, to any sum not exceeding the amount required to be expended on account of said road.

Your orators further state that said corporation did, from time to time,

increase its capital stock, and issue certificates of stock therefor,
10 which said certificates of stock it sold to persons and corporations in this and other States, and in foreign countries; and that on the first day of May, A. D. eighteen hundred and seventy-four, the aggregate amount of certificates of stock which had been so issued and sold by said corporation amounted to the sum of sixteen million seven hundred and twenty-three thousand seven hundred and nine and $\frac{20}{100}$ dollars, the entire proceeds of which have been expended by said corporation in the acquisition of the right of way for said road and in the grading, building, and constructing of said road, and the building of bridges and culverts thereon; in the erection of depots, freight-houses, machine-shops, etc., and in the purchase of engines, locomotives, construction-cars, freight-cars, passenger-cars, tools, and other property necessary to be owned and used in the construction and operation of said road.

Your orators further state that said road has been in use and operation for about the period of twenty years, and that the wear and tear of said road, and the natural and inevitable decay and deterioration thereof, and of the materials whereof it was constructed, and of its furniture, machinery, and rolling-stock, have been such that said corporation has been compelled, from time to time, to repair and replace the same, and has during said period, in addition to other expenses it had to incur to keep said road from going to decay and destruction, been obliged to, and has, replaced the ties on said road as many as three times, and has been obliged to, and has, still more frequently, replaced the rails upon said road.

Your orators further state that, owing to the rapid development of the country, and the consequent great increase of business on said road since it was first constructed and put into operation, said corporation has been compelled, for the purpose of meeting the demands of such increased business, to make large and heavy expenditures; and not having the means wherewith to meet these demands upon it, it was under the necessity of borrowing money therefor, for which money it issued and delivered its bonds to the persons and corporations from whom money was so borrowed, for the purpose aforesaid; that on the said first day of May, A. D. 1874, the indebtedness which said corporation had thus incurred, and for which it had issued its bonds, amounted to
11 the sum of eleven million one hundred and sixty-four thousand one hundred and sixty-nine and $\frac{18}{100}$ dollars, the whole of which has been expended by said corporation in building a double track over portions of its road; in repeatedly replacing the ties and rails upon the whole of its road; in substituting steel for iron rails upon large portions of said road; and in fencing and ballasting the same; in enlarging and improving its depots, freight-houses, machine-shops, etc.; and in replacing such as have, from time to time, been destroyed by fire; in rebuilding bridges and culverts; in purchasing a large additional number of locomotives, and freight, passenger, and sleeping cars for the use of said road; and in doing all other things which were necessary to be done to keep said road in proper condition for the accommodation of the public, to meet the demands which were made upon it, and to enable it to transact its business, so that, on the said first day of May, 1874, as your orators charge, the whole amount of money which it had raised by the sale of certificates of stock, and by borrowing money upon its bonds as hereinbefore stated, had been expended in keeping up, enlarging, and improving said road, in increasing the appendages and furniture thereof, and adding to its facilities for doing business.

And your orators further state that, on the said 1st day of May, A. D. 1874, the said road and appurtenances, and the tangible property connected therewith and pertaining thereto, represented the whole amount of the bonded indebtedness, and the whole amount of stock which said corporation had sold, and that, over and above said railroad and the tangible property connected therewith, said corporation was not, on the said first day of May, 1874, the owner of any capital stock whatever, nor was there any capital stock of said railroad company, except as above stated, in the possession of, or under the control of, said corporation.

And your orators further state that, prior to said first day of May, 1874, said corporation had become lessee of the American Central Railroad, the Dixon, Peoria and Hannibal Railroad, the Ottawa, Oswego and Fox River Valley Railroad, the Illinois Grand Trunk Railroad, the Peoria and Hannibal Railroad, the Carthage and Burlington Rail-
12 road, and the Quincy and Warsaw Railroad, all in the State of Illinois, and the Keokuk and St. Paul Railroad in the State of Iowa, each of which said railroads had, on the said first day of May, 1874, a large bonded indebtedness, which said indebtedness amounted in the aggregate to the sum of six millions seven hundred and fifty-six thousand dollars, and the bonds for which, as your orators are informed and believe, and so charge, were then held and owned by, and were the property of persons and corporations in this and other States and foreign countries, and none of which were held and owned by or were the property of said Chicago, Burlington and Quincy Railroad Company, and all of which said bonds had been issued and negotiated by said railroads prior to the time at which said Chicago, Burlington and Quincy Railroad Company became the lessee thereof.

And your orators further state that, by virtue of the lease of the said roads as above mentioned, the said Chicago, Burlington and Quincy Railroad Company became entitled to, and has the possession and control of, all of said roads, and of all their buildings, rolling-stock, furniture, and tangible property of every kind belonging and appertaining to said roads, and is therefore legally and justly subject to be assessed for taxation upon said roads and their tangible property in Illinois. But said Chicago, Burlington and Quincy Railroad Company is not liable for the payment of the bonded indebtedness of said roads, or any of them, or any part thereof; it being the lessee of said roads for the sole and only purpose of running and operating them, and thereby being able to make, both for itself and its patrons, advantageous and unbroken business connections.

Your orators further state that, in conformity with the law of Illinois, the said Chicago, Burlington and Quincy Railroad Company did, heretofore, on or about the 1st day of May, 1874, cause to be filed in the offices of the clerks of the counties of Cook, Du Page, Kane, Kendall, De Kalb, Lee, La Salle, Bureau, Henry, Knox, Warren, Henderson, Fulton, McDonough, Hancock, Adams, Stark, Peoria, Schuyler, Mercer, and Whiteside, in the said State of Illinois, through which said counties the said Chicago, Burlington and Quincy Railroad or some of
13 said leased railroads run, schedules containing, among other matters, statements of the property of the said Chicago, Burlington and Quincy Railroad Company in each of said counties; and, as by law required, the said Chicago, Burlington and Quincy Railroad Company did also file, on or about the first of May, 1874, a report of its property in the State of Illinois with the auditor of public accounts in and for the said State.

Your orators further state that, on or about the 1st day of May, 1874, the entire property of said Chicago, Burlington and Quincy Railroad Company in the said counties of Cook, Du Page, Kane, Kendall, De Kalb, Lee, La Salle, Bureau, Henry, Knox, Warren, Henderson, Fulton, McDonough, Hancock, Adams, Stark, Peoria, Schuyler, Mercer, and Whiteside, except property denominated in the revenue law "railroad track" and "rolling-stock," was appraised for taxation by the respective assessors of the different townships in said counties, wherein said Chicago, Burlington and Quincy Railroad Company had any property subject to taxation; and that afterwards the assessments thus made by said township assessors were revised and confirmed by the respective county boards of equalization, whose duty by law it was to equalize taxes in said counties, and the same were thereupon returned by the clerks of said counties respectively to the auditor for the State of Illinois; that, as thus returned to said auditor, the assessments against said Chicago, Burlington and Quincy Railroad Company, in Cook County, for the year 1874, was as follows:

Personal property other than rolling-stock, ten thousand one hundred and one dollars, ($10,101.)

Lands and lots, other than right of way, eight thousand and fifty dollars, ($8,050.)

That the assessment against said company, in the county of Du Page, for the year 1874, was as follows:

Personal property other than rolling-stock, five hundred and fifteen dollars, ($515.)

Lands and lots, other than right of way, twenty-five dollars, ($25.)

That the assessments against said company, in the county of Kane, for the year 1874, was as follows:

Personal property other than rolling-stock, three hundred and fifteen thousand eight hundred and fifty-five dollars, ($315,855.)

14 Lands and lots other than right of way, two hundred and ninety-one thousand nine hundred and thirty-five dollars, ($291,935.)

That the assessment against said company, in the county of Kendall, for the year 1874, was as follows:

Personal property other than rolling-stock, one thousand nine hundred and fifty dollars, ($1,950.)

That the assessment against said company, in the county of De Kalb, for the year 1874, was as follows:

Personal property other than rolling-stock, two hundred and thirty-eight dollars, ($238.)

That the assessment against said company, in the county of Lee, for the year 1874, was as follows:

Personal property other than rolling-stock, one thousand four hundred and seventy-eight dollars, ($1,478.)

That the assessment against said company, in the county of La Salle, for the year 1874, was as follows:

Personal property other than rolling-stock, two thousand five hundred dollars, ($2,500.)

Lands and lots other than right of way, one hundred and thirty dollars, ($130.)

That the assessment against said company, in the county of Bureau, for the year 1874, was as follows:

Personal property other than rolling-stock, one thousand one hundred and sixteen dollars, ($1,116.)

Lands and lots other than right of way, one thousand four hundred and seventy-seven, ($1,477.)

That the assessment against said company, in the county of Henry, for the year 1874, as follows:

Personal property other than rolling-stock, five hundred and ninety-seven dollars, ($597.)

Lands and lots other than right of way, nine dollars, ($9.)

That the assessment against said company, in the county of Knox, for the year 1874, was as follows:

Personal property other than rolling-stock, one hundred and forty-eight thousand one hundred and forty dollars, ($148,140.)

Lands and lots other than right of way, one hundred and twenty-three thousand one hundred and fifty-one dollars, ($123,151.)

That the assessment against said company, in the county of Warren, for the year 1874, was as follows:

15 Personal property other than rolling-stock, two hundred and eighty-eight dollars, ($288.)

That the assessment against said company, in the county of Henderson, for the year 1874, was as follows:

Personal property other than rolling-stock, one thousand two hundred and forty-three dollars, ($1,243.)

Lands and lots other than right of way, one thousand six hundred and forty-one dollars, ($1,641.)

That the assessment against said company, in the county of Fulton, for the year 1874, was as follows:

Personal property other than rolling-stock, twelve thousand two hundred and eighty dollars, ($12,280.)

Lands and lots other than right of way, five hundred and twenty-eight dollars, ($528.)

That the assessment against said company, in the county of McDonough, for the year 1874, was as follows:

Personal property other than rolling-stock, two thousand four hundred and thirteen dollars, ($2,413.)

That the assessment against said company, in the county of Hancock, for the year 1874, was as follows:

Personal property other than rolling-stock, one thousand seven hundred and twenty-five dollars, ($1,725.)

Lands and lots other than right of way, twenty dollars, ($20.)

That the assessment against said company, in the county of Adams, for the year 1874, was as follows:

Personal property other than rolling-stock, three thousand five hundred and seventy-five dollars, ($3,575.)

Lands and lots other than right of way, nine hundred and sixty-one dollars, ($961.)

That the assessment against said company, in the county of Stark, for the year 1874, was as follows:

Personal property other than rolling-stock, four hundred and twenty-eight dollars, ($428.)

Lands and lots other than right of way, one thousand five hundred and sixty dollars, ($1,560.)

That the assessment against said company, in the county of Peoria, for the year 1874, was as follows:

Personal property other than rolling-stock, nine hundred and thirty-four dollars, ($934.)

Lands and lots other than right of way, fifty-seven dollars, ($57.)

16 That the assessment against said company, n the county of Schuyler, for the year 1874, was as follows:

Personal property other than rolling-stock, eight hundred and thirty-one dollars, ($831.)

That the assessment against said company, in the county of Mercer, for the year 1874, was as follows:

Personal property other than rolling-stock, five hundred and seventy-eight dollars, ($578.)

Lands and lots other than right of way, sixty dollars, ($60.)

That the assessment against said company, in the county of Whiteside, for the year 1874, was as follows:

Personal property other than rolling-stock, eight hundred and twenty-six dollars, ($826.)

Lands and lots other than right of way, one hundred and fifty-nine dollars, ($159.)

Your orators further state that the foregoing assessments included and covered all the property belonging to the Chicago, Burlington and Quincy Railroad Company in said counties and in the State of Illinois, on the 1st day of May, 1874, except property denominated railroad track and rolling-stock, and that the same was a just and fair valuation of said corporation's property as compared with the valuations of other property in said counties and State for the year 1874. And your orators state that the above assessments were returned by the auditor of public accounts for Illinois to the Illinois State board of equalization, and that said board of equalization, at its annual session for the year 1874, by adding to some and deducting from others, equalized said assessments in said counties as follows:

In the county of Cook, personal property other than rolling-stock, seventeen thousand six hundred dollars, ($17,600.)

Lands and lots other than right of way, sixteen thousand one hundred dollars, ($16,100.)

Total equalized value of property assessed, $33,700.

In the county of Du Page, personal property other than rolling-stock, five hundred and eighty-seven dollars, ($587.)

Lands and lots other than right of way, twenty-eight dollars, ($28.)

Total equalized value of property assessed, $615.

17 In the county of Kane, personal property other than rolling-stock, two hundred and twenty-one thousand and ninety-eight dollars ($221,098.)

Lands and lots other than right of way, two hundred and ten thousand one hundred and seventeen dollars, ($210,117.)

Total equalized value of property assessed, $431,215.

In the county of Kendall, personal property other than rolling-stock, one thousand four hundred and twenty-three dollars, ($1,423.)

Total equalized value of property assessed, $1,423.

In the county of De Kalb, personal property other than rolling-stock, one hundred and sixty-seven dollars, ($167.)

Total equalized value of property assessed, $167.

In the county of Lee, personal property other than rolling-stock, one thousand and sixty-four dollars, ($1,064.)

Total equalized value of property assessed, $1,064.

In the county of La Salle, personal property other than rolling-stock, one thousand nine hundred and twenty-five dollars, ($1,925.)

Lands and lots other than right of way, one hundred dollars, ($100.)

Total equalized value of property assessed, $2,025.

In the county of Bureau, personal property other than rolling-stock, two thousand two hundred and sixty-five dollars, ($2,265.)

Lands and lots other than right of way, three thousand five hundred dollars, ($3,500.)

Total equalized value of property assessed, $5,765.

In the county of Henry, personal property other than rolling-stock, four hundred and ninety dollars, ($490.)

Lands and lots other than right of way, seven dollars, ($7.)

Total equalized value of property assessed, $497.

In the county of Knox, personal property other than rolling-stock, ninety-seven thousand seven hundred and seventy-three dollars, ($97,773.)

Lands and lots other than right of way, ninety one thousand one hundred and thirty-one dollars, ($91,131.)

Total equalized value of property assessed, $188,904.

In the county of Warren, personal property other than rolling-stock, two hundred and seven dollars, ($207.)

Total equalized value of property assessed, $207.

18 In the county of Henderson, personal property other than rolling-stock, one thousand and thirty-two dollars, ($1,032.)

Lands and lots, other than right of way, one thousand three hundred and sixty-two dollars, ($1,362.)

Total equalized value of property assessed, $2,394.

In the county of Fulton, personal property, other than rolling-stock, seven thousand nine hundred and eighty-two dollars, ($7,982.)

Lands and lots, other than right of way, four hundred and one dollars, ($401.)

Total equalized value of property assessed, $8,383.

In the county of McDonough, personal property other than rolling-stock, one thousand five hundred and ninety-three dollars, ($1,593.)

Total equalized value of property assessed, $1,593.

In the county of Hancock, personal property other than rolling-stock, one thousand three hundred and ninety-seven dollars, ($1,397.)

Lands and lots other than right of way, sixteen dollars, ($16.)

Total equalized value of property assessed, $1,413.

In the county of Adams, personal property other than rolling-stock, three thousand one hundred and eighty-two dollars, (3,182.)

Lands and lots other than right of way, one thousand and forty-eight dollars, ($1,048.)

Total equalized value of property assessed, $4,230.

In the county of Stark, personal property other than rolling-stock, two hundred and seventy-eight dollars, ($278.)

Lands and lots other than right of way, nine hundred and thirty-six dollars, ($936.)

Total equalized value of property assessed, $1,214.

In the county of Peoria, personal property other than rolling-stock, seven hundred and one dollars, ($701.)

Lands and lots other than right of way, thirty-five dollars, ($35.)

Total equalized value of property assessed, $736.

In the county of Schuyler, personal property other than rolling-stock, seven hundred and forty-eight dollars, ($748.)

Total equalized value of property assessed, $748.

In the county of Mercer, personal property other than rolling-stock, five hundred and fifty-five dollars, ($555.)

19 Lands and lots other than right of way, fifty-eight dollars, ($58.)

Total equalized value of property assessed, $613.

In the county of Whiteside, personal property other than rolling-stock, six hundred and twenty dollars, ($620.)

Lands and lots other than right of way, one hundred and nineteen dollars, ($119.)

Total equalized value of property assessed, $739.

Upon which said assessments, so equalized as aforesaid, said Chicago, Burlington & Quincy Railroad Company is ready and willing to pay the taxes extended against it, and your orators are ready and willing, and hereby offer to pay said taxes for said company, and will, if required so to do, bring the amount of said taxes into court to abide the order of the court.

Your orators further state that the said board of equalization, at its said annual meeting for 1874, assessed said Chicago, Burlington & Quincy Railroad Company in said county of Cook as follows:

Upon right of way	$20,086
" main track	67,239
" side-track	154,710
" rolling-stock	36,016
and assessed said company in the county of Du Page as follows:	
Upon right of way	$28,810
" main track	96,444
" side-track	86,033
" rolling-stock	51,659
and assessed said company in the county of Kane as follows:	
Upon right of way	$34,678
" main track	116,086
" side-track	86,807
" rolling-stock	62,181
and assessed said company in the county of Kendall as follows:	
Upon right of way	$44,576
" main track	149,219
" side-track	37,489
" rolling-stock	79,928
and assessed said company in the county of De Kalb as follows:	
20 Upon right of way	$12,977
" main track	43,441
" side-track	7,793
" rolling-stock	23,269
and assessed said company in the county of Lee as follows:	
Upon right of way	$50,477
" main track	168,974
" side-track	5,220
" rolling-stock	90,508
and assessed said company in the county of La Salle as follows:	
Upon right of way	$87,087
" main track	291,528
" side-track	121,550
" rolling-stock	156,154
and assessed said company in the county of Bureau as follows:	
Upon right of way	$96,814
" main track	324,090
" side-track	40,682
" rolling-stock	173,595
and assessed said company in the county of Henry as follows:	
Upon right of way	$46,885
" main track	156,948
" side-track	23,604
" rolling-stock	84,067

and assessed said company in the county of Knox as follows:

Under right of way	$94,619
" main track	316,740
" side-track	72,016
" rolling-stock	169,658

and assessed said company in the county of Warren as follows:

Upon right of way	$27,758
" main track	92,920
" side-track	10,900
" rolling-stock	49,772

and assessed said company in the county of Henderson as follows:

	Upon right of way	$43,093
21	Upon main track	144,256
	" side track	26,240
	" rolling-stock	77,270

and assessed said company in the county of Fulton:

Upon right of way	$68,486
" main track	229,259
" side-track	15,931
" rolling-stock	122,800

and assessed said company in the county of McDonough:

Upon right of way	$45,644
" main track	152,796
" side-track	23,793
" rolling-stock	81,843

and assessed said company in the county of Hancock:

Upon right of way	$55,010
" main track	184,148
" side-track	12,605
" rolling-stock	98,636

and assessed said company in the county of Adams:

Upon right of way	$76,018
" main track	254,473
" side-track	49,682
" rolling-stock	136,305

and assessed said company in the county of Stark:

Upon right of way	$27,798
" main track	93,055
" side-track	8,106
" rolling-stock	49,844

and assessed said company in the county of Peoria:

Upon right of way	$59,625
" main track	199,596
" side-track	27,422
" rolling-stock	106,911

and assessed said company in the county of Schuyler:

Upon right of way	$15,146
" main track	50,702
" side-track	3,944
" rolling-stock	27,158

and assessed the company in the county of Mercer:

Upon right of way	$47,640
" main track	158,874
" side-track	14,086
" rolling-stock	85,098

22 and assessed said company in the county of Whiteside:

	Upon right of way	$50,755
"	main track	169,906
"	side-track	9,463
"	rolling-stock	91,008

making the total assessment (not including capital stock, tax) against said company upon all its property in said counties denominated railroad track and rolling-stock, $7,186,252.

Your orator further states that the foregoing were all the counties in the State of Illinois, wherein said company had any property subject to taxation; that after the State board of equalization had reviewed and finally fixed the amount of the assessment against said company, the aggregate amount assessed against said company upon all its tangible property in the said State of Illinois, was $7,873,897, which amount, your orator charges, was intended by the various assessors and officers engaged in making said assessment to cover and include all property of every kind, nature, and description, belonging to said company in the State of Illinois, subject to taxation for the year 1874.

And your orator further states that the said assessment so made by the said State board of equalization upon railroad-track and rolling-stock was distributed to the counties as follows, to wit:

To the county of		Cook	$278,051
"	"	Du Page	262,946
"	"	Kane	299,752
"	"	Kendall	311,212
"	"	De Kalb	87,480
"	"	Lee	315,179
"	"	La Salle	656,319
"	"	Bureau	635,181
"	"	Henry	311,504
"	"	Knox	653,033
"	"	Warren	181,350
"	"	Henderson	290,859
"	"	Fulton	436,476
"	"	McDonough	304,076
"	"	Hancock	350,399
"	"	Adams	516,478
"	"	Stark	178,803
23 To the county of		Peoria	393,554
"	"	Schuyler	96,950
"	"	Mercer	305,518
"	"	Whiteside	321,132

The taxes upon all which said assessments so distributed to said counties, with the exception of $204,501.60 of the amount distributed to Kane County, and $83,961 of the amount distributed to Knox County, the said Chicago, Burlington and Quincy Railroad Company is ready and willing to pay, and your orator hereby offers to pay the same for said company, and will, if required, bring the money therefor into court.

Your orators aver that said company is doubly assessed in the county of Kane to the amount of $204,501.60, in manner following, viz: There was returned by said company as railroad-track, to said State board of equalization all the land used by said company in its business in said county, which included all the land owned by said company in said county except certain lots assessed in said county at $3,800, and equalized by said State board at $2,660, and of lands of the value of $2,955.40, making a total valuation of $5,615.40; and all of the real estate of said

company in said county, except of said value of $5,615.40, was assessed by said State board as "railroad-track;" but inasmuch as the same was included in one total assessment of all the railroad-track of said county, your orators cannot aver the amount so assessed by said State board on said property in Kane County, but will show the same at the trial thereof as the court may direct.

Notwithstanding which the same real estate was assessed in said county and returned to said State board as "lands," and the same were equalized by said State board and assessed at the sum of $204,501.60; and said company is ready and willing to pay the tax levied upon said assessment of $5,615.40 on lands and lots, as aforesaid, and the taxes levied upon the lawful assessment of the property doubly assessed as aforesaid.

And your orators further aver that said company is doubly assessed in the county of Knox to the extent of $83,961.00 in manner following, to wit: There was returned by said company to said State board of
24 equalization as "railroad-track," all the land used by said company in its business in said county, which included all the lands and lots owned by said company in said county, except certain lands valued $7,170.00; and all of the real estate of said company in said county, except of said value of $7,170.00 was assessed by said State board as "railroad-track." But inasmuch as the same was included in one total assessment of the railroad-track of said company, your orators cannot aver the amount so assessed by said State board on said property in Knox County, but will show the same at the trial hereof as the court may direct. Notwithstanding which the same real estate was assessed in said county, and returned to said State board as "lands" and "lots," and the same was equalized by said State board and assessed at the sum of $83,961.00; and said company is ready and willing to pay the tax levied upon said assessment of $7,170.00 on lands and lots as aforesaid, and the tax as levied upon the lawful assessment of the property doubly assessed as aforesaid.

And your orators further state that the said assessments hereinbefore referred to as having been made by the local assessors of the counties, and by the said State board of equalization, cover and include all property of every kind and character and denomination owned or possessed by said company in said State of Illinois, except its franchise, which your orator charges cannot be assessed for taxation as property by valuation, and which said assessments taken together constitute the total assessment against said company for the year 1874, with the exception of the sum of $12,123,668, hereinafter referred to, and which sum is a direct assessment, made originally by said board under the name of capital-stock tax.

Your orators state that the shares of stock which said company has heretofore sold, and which pertain to its road in the State of Illinois, and which said shares are now owned and held by other persons and corporations in this and other States, and in foreign countries, amount in the aggregate to the sum of $16,723,709.20, no part of which is held, owned, or claimed by said company, and that the whole of said company's capital stock is represented by its tangible property, which was, as hereinbefore stated, assessed to said company by the said State
25 board of equalization under the general designation of "railroad-track," and "rolling-stock," at the sum of seven million one hundred and eighty-six thousand two hundred and fifty-two dollars; and by other tangible property, consisting of lands and town lots, not included under the general description of "railroad-track," and other

personal property not included under the general description of "rolling-stock," which was assessed to said company in the several counties, cities, towns, and districts in which it is situated, and equalized to said company for the purposes of taxation, by the said State board of equalization, at the sum of $687,645, making the aggregate sum of $7,873,897, upon which said company is assessed for taxation on tangible property in the State of Illinois, and upon which said company is ready and willing to pay its taxes, with the exceptions hereinbefore mentioned as to a portion of the assessments of the State board distributed to the counties of Kane and Knox; and that besides its said tangible and visible property as above stated, said company owns no capital stock whatever.

Your orators further state that, on the said first day of May, 1874, the bonded indebtedness of said company amounted to the sum of eleven million one hundred and sixty-four thousand one hundred and sixty-nine dollars and eighteen cents, the bonds and evidences of which were, on the said first day of May, 1874, held and owned by and belonged to other persons and corporations in this and other States and foreign countries.

Your orators further state that, at the annual meeting of said board of equalization for the year of 1874, the schedules hereinbefore mentioned as having been returned by said company and by the clerks of said counties to the auditor of said State of Illinois were by said auditor laid before the said board, and thereupon the said board proceeded to ascertain the value of the capital stock of said company (over and above its tangible property, as aforesaid, and which said tangible property, your orator charges, constituted the whole of said company's capital stock,) for the purpose of levying a tax thereon as against said company, and made said valuation in pursuance of a preamble and resolutions which had been adopted by said board of equalization prior to the making of said pretended assessment, which said preamble and resolutions are as follows, to-wit:

26 "Whereas the fourth clause of sec. 3, of an act 'for the assessment of property, and for the levy and collection of taxes,' approved March 30th, 1872, in force July 1st, 1872, provides as follows:

"SEC. III, 4th. The capital stock of all companies and associations now or hereafter created under the laws of this State, shall be so valued by the State board of equalization as to ascertain and determine, respectively, the fair cash-value of such capital stock, including the franchise over and above assessed value of the tangible property of such company or association. Said board shall adopt such rules and principles for ascertaining the fair cash-value of such capital stock as to it may seem equitable and just; and such rules and principles, when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject, however, to such change, alteration, or amendment as may be found from time to time to be necessary by said board: Provided, that in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of capital stock of any such company or association shall not be assessed or taxed in the State. This clause shall not apply to the capital stock or shares of capital stock of banks organized under the general banking laws of this State."

"Therefore, be it

"Resolved, That, for the purpose of ascertaining the fair cash-value of the capital stock, including the franchise, of all companies and associations now or hereafter created under the laws of this State, and for the assessment of the same or so much thereof as may be found to be

in excess of the assessed or equalized value of the tangible property of such companies and associations respectively,"

"We, the State board of equalization, hereby adopt the following rules and principles, viz:

"FIRST. The market or fair cash value of the shares of capital stock, and the market or fair cash value of the debt (excluding from such debt the debt for current expenses) shall be combined or added together, and the aggregate amount so ascertained shall be taken and held to
27 be the fair cash-value of the capital stock, including the franchise, respectively, of such companies and associations.

"SECOND. From the aggregate amount, ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property respectively, of such companies and associations, (such equalized or assessed valuation being taken, in each case, as the same may be determined by the equalization or assessment of property by this board,) and the amount remaining in each case, if any, shall be taken and held to be the amount and fair cash-value of the capital stock, including the franchise, which this board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this State."

And your orators further charge that the said board of equalization then proceeded to assess the value of the capital stock of said company, over and above said company's tangible property as aforesaid, for the purpose of taxation, by adding to the market-value of the shares of stock held and owned by the individual stockholders of said Chicago, Burlington and Quincy Railroad Company, the bonded indebtedness of said Chicago, Burlington & Quincy Railroad Company and the bonded indebtedness of the railroad companies in Illinois, hereinbefore mentioned, whose roads had been leased to and operated by said Chicago, Burlington and Quincy Railroad Company, and equalizing said gross amount with the other property of the State, by deducting therefrom the same proportionate percentage as was estimated to have been deducted from the fair cash-value of all other property throughout the State, and that from the amount of the capital stock so called, made up and estimated, and equalized as aforesaid, at the sum of nineteen million nine hundred and ninety-seven thousand five hundred and sixty-five dollars, the said State board of equalization deducted the several amounts assessed for "railroad-track" and "rolling-stock," and also the several amounts assessed to said company, in the several counties, cities, towns, and districts through which said company's said railroad passes, for real and personal estate other than the property known as "railroad-track" and "rolling-stock," leaving the amount at which said company was assessed for taxation in the State of Illinois, twelve million
28 one hundred and twenty-three thousand six hundred and sixty-eight dollars, under the designation of and as capital stock, which is an amount in excess of any property belonging to said company, and upon which said company cannot therefore be justly required to pay taxes.

And your orators further show that the franchises of said company are not exclusive, and are of no practical value, and no tax should be levied on the property of said company in consequence of the exercise of the same; and that the franchises exercised by said company have not in fact been assessed by the State board of equalization, but that all the tax assessed against said company has been assessed upon the tangible property of said company, and upon the pretended value of its capital stock, ascertained, as it is claimed, by combining, as hereinbe-

fore stated, the amount of the outstanding certificates of the stock of said company, held and owned by individual stockholders, its bonded debt, and the bonded debt of the companies by which said roads leased to said Chicago, Burlington and Quincy Railroad Company were respectively constructed in the State of Illinois.

But notwithstanding said Chicago, Burlington and Quincy Railroad Company was not liable to such assessment, or to the payment of the taxes thereon; yet the said board of equalization, disregarding its duty, and exceeding its power and authority in the premises, proceeded to and did assess said company for taxation the said sum of twelve million one hundred and twenty-three thousand six hundred and sixty-eight dollars, as capital stock, and which said sum, when added to the sum of $7,873,897, being the amount at which said company's tangible property in the State of Illinois was assessed, makes the aggregate of the sum of $19,997,565, upon which said company was assessed and equalized for taxation in the State of Illinois by the said board of equalization for the year 1874.

And your orators further charge, that after said board had so assessed said company for taxation, it proceeded to, and did distribute said assessment to and among the several counties into or through which said company's said railroad enters or passes, apportioning the same to said counties as hereinbefore stated. And after said board had com-
29 pleted its assessment and apportionment as aforesaid, and on or about the day of , 1874, the auditor of public accounts of the State of Illinois issued and delivered to the clerks of said counties, respectively, certificates of the assessments made by the said board of equalization upon railroad property in said counties, respectively, as follows, to wit:

STATE OF ILLINOIS, AUDITOR'S OFFICE,
Springfield, October 1874.

To the county clerk of County:

SIR: You are hereby notified that the State board of equalization, at its session begun on the second Tuesday, being the eleventh day of August, 1874, assessed railroad property in County, for the year 1874, as follows:

NAME OF RAILROAD.	CLASS A.—RAILROAD TRACK.								CLASS B.	CAPITAL STOCK.	Total value of R. R. property in county, as assessed by State board of equalization.
	Right of way and improvements thereon.		MAIN TRACK.			Side, 2d, or turnout.			Rolling-stock.		
			Length.		Assessed value.	Length.		Assessed value.			
Chicago, Burlington and Quincy Railroad.	Acres.	As'd val.	Miles.	Ft.		Miles.	Ft.		Ass'd value.	Ass'd value.	

You will, therefore, proceed to apportion the above-assessed values of railroad property to the several localities in your county entitled to the same, in the manner provided by law.

Given under my hand and official seal, the date first above written.

C. E. LIPPINCOTT,
Auditor of Public Accounts.

31 And your orators further charge that the said Chicago, Burlington and Quincy R. R. Company does not own any part of the bonded indebtedness of the said railroad companies hereinbefore mentioned, whose roads have been leased to, and are being operated by, said Chicago, Burlington and Quincy Railroad Company, nor any of them, nor is in any way interested therein; nor is it in any way bound or liable for the payment of said indebtedness, or any part thereof.

And your orators again charge that the actings and doings of said State board of equalization in assessing against said Chicago, Burlington and Quincy Railroad Company, for taxation, the shares of stock in the said Chicago, Burlington and Quincy Railroad Company, held and owned by other persons and corporations, and not held and owned by said Chicago, Burlington and Quincy Railroad Company, and the amount of said company's bonded indebtedness, which is held and owned by other persons and corporations, and not by said company, and the bonded indebtedness of the other railroad companies hereinbefore mentioned, whose roads have been leased to, and are being operated by, said Chicago, Burlington and Quincy Railroad Company, and which said bonded indebtedness of said railroad companies is held and owned by other persons and corporations, and not by said Chicago, Burlington and Quincy Railroad Company, and for the payment of which said company is not liable, were without authority of law, and illegal, and tend greatly to wrong, injure, and oppress your orators in the premises, and to inflict upon them great and irreparable injury.

Your orators further state that while said State board of equalization was in session for the purpose of equalizing assessments throughout the State, and of making original assessments upon railroads and other corporations, said Chicago, Burlington and Quincy Railroad Company appeared before said board by attorney, and resisted the unjust action of said board in making the exorbitant assessment which it did make against said company for capital stock which said company did not own, and against including the estimate of the amount of such capital stock, the indebtedness of said Chicago, Burlington and Quincy Rail-

32 road Company, and the indebtedness of the said railroad companies whose roads had been leased by the said Chicago, Burlington and Quincy Railroad Company as hereinbefore stated, and represented to said State board of equalization the injustice of doing so, and informed said State board that said company owned no part of the said indebtedness of said other railroad companies above mentioned, and had no interest therein, and was not bound for the payment of the same, or any part thereof, and that it was not the owner of any part of the shares of the capital stock of said Chicago, Burlington and Quincy Railroad Company, or of the bonded debt of said company, but that the whole amount of said shares of such capital stock and bonded indebtedness was held and owned by other persons and corporations, and should not be assessed against said company, and that everything which said company owned, except its franchise, was its tangible property, which had already been assessed against said company at the said sum of $7,873,897.

And your orators charge that the said Chicago, Burlington and Quincy Railroad Company, by and through its attorney, who personally appeared before said State board, distinctly stated to and informed said board, before the said assessment of capital stock was made by said board, that said company owned no property in the State of Illinois or elsewhere beyond its line of road and improvements, consisting of stations, machine-shops, fixed machinery, and rolling-stock, and ordinary appurtenances, and ma-

terials, and supplies on hand necessary for the convenient operation of its line of road, except a few shares of stock in other corporations of the State of Illinois, most of which were entirely worthless, and the total cash value of all which would not exceed two hundred thousand dollars on the first of May, 1873, and thence hitherto, and that all of said corporations had themselves returned their property for taxation, and for which reason such shares were not subject to any further assessment; and as all the property of every kind belonging to said company which was subject to taxation, consisting of said line of road and its appurtenances, had already been assessed, said company did, by its said attorney, respectfully but earnestly protest to said State board of equalization
33 against any further assessment against it or its property under the name of capital-stock assessment, or under any other name or devise whatever.

Your orators further charge that the franchise of said Chicago, Burlington and Quincy Railroad Company is of no value as property aside from its said road and the tangible property connected therewith, all of which, as before stated, has been assessed for taxation; and said franchise is, in fact, of no considerable value, as any individual or association may, under the laws of this State, obtain a charter to construct and operate an exactly similar road, or a parallel road, at an expense of not exceeding twenty-five dollars.

Your orators further state that § 1, article 9 of the constitution of the State of Illinois provides that "the general assembly shall provide such revenues as may be needful by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the valuation of his, her, or its property," * * * and that "the general assembly shall have power to tax peddlers, merchants, commission-merchants, showmen, jugglers, inn-keepers, grocery-keepers, liquor-dealers, toll-bridges, ferries, insurance, telegraph, and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall, from time to time, direct by general law, uniform as to the class upon which it operates."

And your orators charge that no general law has yet been passed by the general assembly of the State of Illinois for the taxation of railroad corporations for the ownership and use of franchises and privileges, in the manner in which alone they can and must be taxed, if taxed at all, under and by virtue of said constitutional provision; and that if any law has been passed authorizing the taxation of railroad corporations for the use of franchises, said law, as it has been construed and executed by said State board of equalization, is not of uniform operation upon the class known and designated as railroad corporations; but your orators charge that, if the assessment made by the said State board against the said Chicago, Burlington and Quincy Railroad Company as and for capital stock, is claimed to be an assessment for the use of its franchise by the said company, *that* then the said law, as enforced by the said
34 State board, instead of being uniform in its operation upon railroad corporations, is partial, irregular, unjust, and oppressive in its operation upon the said Chicago, Burlington and Quincy Railroad Company and upon your orators as stock and bond holders in said company, and imposes taxes upon said company, and consequently upon your orators, as stockholders in said company, out of all proportion greater than is imposed on other railroad corporations in this State for the use of similar and equally valuable franchises and privileges.

Your orators further state and show unto your honor, that the act entitled "An act to enable railroads and plank-road companies to con-

solidate their stock, approved February 28th, 1854," hereinbefore referred to and hereto attached as Exhibit 7, contains among others the following provision: "Said consolidated company shall be a body corporate and politic; shall have a common seal or seals, and by such name or names, shall be respectively contracted with and make contracts, shall sue and be sued, implead and be impleaded with, and shall have all the powers, franchises, and immunities which the said respective companies shall have by virtue of their respective charters before such consolidation, passed within the State of Illinois."

That the charter of the Aurora Branch Railroad, hereinbefore referred to, declares that the said corporation is authorized to prescribe "the rate of toll for the transportation of persons or property thereon, as may be suitable to their interests." The amended charter of the Central Military Tract Railroad Company, passed June 19th, 1852, and hereinbefore referred to, and under which that road was built, provides that "the board of directors shall have power to establish such rates of toll, for the conveyance of persons and property upon the same, as they shall, from time to time, by their by-laws, determine, and to levy and collect the same for the use of said company."

That the charter granted to the Alton and Sangamon Railroad Company, and approved February 27th, 1847, and hereinbefore referred to, provides that, "The said corporation may take and transport upon said railroad, any person or persons, merchandise, or other property, by the force and power of steam or animals, or any combination of them, and may fix, establish, take and receive, such rates of toll for all passengers and property transported upon the same as the said directors shall from time to time establish."

Your orators further aver that the amended charter of the Peoria and Oquawka Railroad Company, approved February 10th, 1851, a copy of which is hereto attached and made a part of this bill as Exhibit 14, contains the following provision: "That the Peoria and Oquawka Railroad Company shall have power to borrow money on the credit of the company not exceeding its authorized capital stock, at a rate of interest not exceeding ten (10) per cent. per annum, payable semi-annually, and may execute bonds therefor, with interest coupons thereto annexed, and secure the payment of the same by mortgage or deed of trust on the whole or any part of the road, property, and income of the company then existing or thereafter to be acquired, and may annex to such mortgage bonds the privilege of converting the same into the capital stock of the company at par at the option of the holders, if such election be signified in writing to the company three years before the maturity of said bonds."

"That the directors of said company be, and they are hereby, authorized to negotiate and sell the bonds of said company at such times and such places either within or without this State, and at such rates and for such prices as in their opinion will best advance the interests of the company, and if such bonds are thus negotiated or sold at a discount below their par value, such sale and disposition thereof shall be as valid and binding on the company in every respect as if they were sold and disposed of at their par value."

That similar provisions are contained in the various charters under which the Chicago, Burlington and Quincy Railroad Company is run and operated, allowing said company to borrow money and issue bonds bearing interest, and to secure the payment thereof, upon the property and income of the company, and to sell and dispose of the same, both within and without the State of Illinois and in foreign countries,

as will be seen by reference to the several acts or charters attached hereto as exhibits, and made a part of this bill of complaint.

36 That your orator, Daniel P. Stone, heretofore and on, to wit, the 5th day of January, A. D. 1858, became the owner and holder of thirty of the bonds of the said Chicago, Burlington and Quincy Railroad Company, of the par value of one thousand dollars each, payable January 1st, 1883, with interest at eight per cent., payable semi-annually, and has ever since been, and is now, the owner and holder of the same.

And your orator, Henry P. Kidder, is owner of one hundred of the bonds of said Chicago, Burlington & Quincy Railroad Company, of the par value of one thousand dollars each, and drawing interest at the rate of eight per cent. per annum, payable semi-annually. That said bonds and the interest to accrue thereon are secured to be paid upon all the property, franchises, and income of said company, and were purchased by your orators upon the belief that said company would be able to meet and pay the same as they become due and the interest accruing thereon from time to time, based upon the fact that said company had the right to regulate its own tolls for the transportation of persons and merchandise in accordance with the several provisions of its charter hereinbefore referred to, and would thereby be able to earn an income out of which to pay the same, and also upon the fact that the company had the right to issue such bonds and secure their payment and the interest to accrue thereon upon its income, and that these rights were fully secured to said company by the constitution of the State and the several charters hereinbefore referred to, and would not be taken away or in any manner impaired by any subsequent legislation of the State of Illinois. That the act of the legislature of the State of Illinois hereinbefore referred to, and under which said taxes are sought to be collected, is repugnant to the provisions of the constitution of the State of Illinois, which provide that all taxes shall be uniform as to the class upon which they operate, and that no law impairing the obligation of contracts shall be passed, and is also in violation of that provision of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts.

37 That the taxes so sought to be collected are illegal and unjust, and if said company is compelled to pay the same its net earnings must be appropriated for that purpose, which ought in good faith to go to its bondholders and stockholders, and thus the security which under the charter and contracts of the said company, made in pursuance thereof, belongs to the bondholders and stockholders in said company will be diminished and impaired in value, and that the enforcement of said act of the legislature under which said taxes are sought to be collected as aforesaid, would impair the obligations of the contract entered into between said company and your orators at the time said bonds were purchased, for that said act compels said company to employ and use the property mortgaged to secure the bonds holden by your orators in such manner as to deprive your orators of the security which lawfully belongs to them under such contract. Your orators further represent to your honor that the gross injustice which the said State board of equalization has wilfully and intentionally done to the said Chicago, Burlington & Quincy Railroad Company, and to your orators as stockholders and bondholders in said company, by partial, disproportional, and excessive assessment and taxation of said company, will fully appear by reference to the proceedings of the said State board of equalization begun and held in the city of Springfield, Illinois, on the 11th of August, 1874, a printed copy of which said proceedings is herewith filed,

marked "Exhibit A," and prayed to be taken and considered as a part of this bill.

It appears by said report, and which your orators charge to be the fact, that there are four thousand three hundred and sixty-nine miles of railroad now in operation in the said State of Illinois, which have been constructed, and are now operated under and by virtue of charters obtained under the laws of said State, and that the total amount of assessment by said State board of equalization upon the various companies who own and operate said railroads, as and for and under the description of capital stock, is thirty-one million three hundred and fourteen thousand one hundred and seventy-five dollars, ($31,314,175,) of which the sum of twelve million one hundred and twenty-three thousand six hundred and sixty-eight dollars, being largely more than one-third of the whole amount thereof, is assessed against the
38 said Chicago, Burlington and Quincy Railroad Company, which said company, according to the statement of said report of said State board, owns and operates only seven hundred and seventy-seven miles of railroad, being a fraction less than one-sixth of the whole amount of railroad in the said State of Illinois; but your orator charges the fact to be, that the said Chicago, Burlington and Quincy Railroad Company owns and operates only a fraction over three hundred and sixty-five miles of railroad under its charter and franchises, being about one-twelfth of the whole amount of railroad owned and operated by the several railroad companies in the said State of Illinois, while the proportion of taxes assessed against it amounts to largely more than one third of the entire railroad taxation in the State.

Your orators state that, according to the said report of the said State board of equalization, the Chicago and Alton Railroad Company owns and operates five hundred and forty-seven miles of road in Illinois, under a charter and franchises in all its essential features, as your orators charge, exactly similar to the charter and franchises of the said Chicago, Burlington and Quincy Railroad Company, and of equal value with the franchise of the said Chicago, Burlington and Quincy Railroad Company, and that said State board of equalization assessed the said Chicago and Alton Railroad Company in the sum of seven million six hundred and twenty-nine thousand eight hundred and twenty-nine dollars ($7,629,829) for its franchises, if said assessment under the description of capital stock is to be regarded as an assessment upon the franchise, and at the same time assessed the said Chicago, Burlington and Quincy Railroad Company, as before stated, in the sum of twelve million one hundred and twenty-three thousand six hundred and sixty-eight dollars ($12,123,668) for a franchise of precisely the same character and of no greater value.

Your orators further state that, according to said report of the said State board of equalization, the Chicago, Rock Island and Pacific Railroad Company owns and operates a railroad in the said State of Illinois of two hundred and thirty-four miles in length, under a charter which your orators charge is, in all essential particulars, similar to the
39 charter of the said Chicago, Burlington and Quincy Railroad Company, and of equal value with the franchises of said Chicago, Burlington and Quincy Railroad Company, and that said State board of equalization assessed the said Chicago, Rock Island and Pacific Railroad Company in the sum of two hundred and thirty-three thousand nine hundred and thirty-six dollars ($233,936) only for its franchises, if said assessment under the description of capital stock is to be regarded as an assessment upon the franchises.

And your orators further charge that it appears by said report of the said State board of equalization, and which your orators allege to be the fact, that the Cairo and St. Louis Railroad Company, the Carbondale and Shawneetown Railroad Company, the Cairo and Vincennes Railroad Company, the Iron Mountain, Chester and Eastern Railroad Company, the Chicago and Pacific Railroad Company, the Chicago and Paducah Railroad Company, the Gilman, Clinton and Springfield Railroad Company, the Grand Haven and Carbondale Railroad Company, the Indiana and Illinois Central Railroad Company, the Jacksonville, Northwestern and Southeastern Railroad Company, the Louisville, New Albany and St. Louis Railroad Company, the Paris and Decatur Railroad Company, the Peoria, Pekin and Jacksonville Railroad Company, the Pittsburgh, Ft. Wayne and Chicago Railroad Company, the Rockford, Rock Island and St. Louis Railroad Company, the Springfield and Northwestern Railroad Company, the St. Louis and Southeastern Railroad Company, the Springfield and Southeastern Railroad Company, the Sycamore and Courtland Railroad Company, the Madison County Railroad Company, the Orion and Minersville Railroad Company, and the Chicago and Illinois Southern Railroad Company are all railroad companies existing and doing business in the State of Illinois under charters derived from said State, and similar in their provisions to the charter of the said Chicago, Burlington and Quincy Railroad Company, and the franchises of each of which said railroad companies is of equal value with the franchises of said Chicago, Burlington and Quincy Railroad Company, and each of which said companies owns a railroad which is in operation in the said State of Illinois, and yet your orators charge the fact to be that said State board of equalization has made no assessment against said railroad companies, nor against any of them, for their franchises, nor on account of the ownership and use of such franchises, nor for capital stock and franchises, nor for capital stock or franchises.

Your orators further state that according to the said report of the said State board of equalization, and which your orator charges to be the fact, there are fifty-eight railroad companies in the said State of Illinois, owning railroads which are in operation in the said State of Illinois under and by virtue of charters derived from said State, all of which said charters and franchises are substantially similar to the charter and franchises of the said Chicago, Burlington and Quincy Railroad Company, and each of which is of equal value with the charter and franchises of the said Chicago, Burlington and Quincy Railroad Company, and that of the whole amount assessed by the said State board of equalization against all of said fifty-eight railroad companies for taxation upon their capital stock or franchises, or capital stock and franchises, whichever it may be held to be, largely more than one-third is assessed against the said Chicago, Burlington and Quincy Railroad Company alone.

Your orators further state that by the equalizations and assessments made by the said State board of equalization for taxation upon the assessed value of the entire taxable property of the State, the proportion charged upon and assessed against the entire railroad property of the State is something less than 7 per cent., while the proportion assessed against and charged upon the said Chicago, Burlington and Quincy Railroad Company is largely in excess of twenty-four (24) per cent. of the entire amount of said railroad assessment for the entire State.

Your orators further charge that the said State board of equalization in making said partial, disproportionate, unjust, and oppressive assessments against the said Chicago, Burlington and Quincy Railroad Com-

pany, did not proceed in accordance with either the revenue laws of the said State of Illinois, or with the rules which the said board had theretofore adopted for its own government and guidance, but in willful and intentional disregard of both, made said assessment with the purpose and design of compelling said Chicago, Burlington and Quincy Rail-
41 road Company to pay an amount of tax largely out of proportion to the value of its property, and greatly in excess of the proportional taxation of other railroad companies in said State.

And your orators further charge that the proceedings of the said State board of equalization, in making the exorbitant and disproportionate assessment which it did make against the said Chicago, Burlington and Quincy Railroad Company, are unjust, oppressive, and injurious to your orators as stockholders and bondholders in said company, inasmuch as it depreciates the value of the shares of stock and the bonds which your orators own, issued by said company, and diminishes the amount of dividends which your orator, Henry P. Kidder, is entitled to and would otherwise receive, from time to time, upon his said shares of stock, and also impairs the security of the bonds belonging to your orators. Your orators further state that the said Chicago, Burlington and Quincy Railroad Company, as it was its duty to do, informed said State board of equalization, before said assessment was made against said company, that said board was computing the capital stock and bonded indebtedness of said company at many millions of dollars more than they really were, and that great injustice would be done to said company and its stockholders if said board should make its estimate of the amount of capital stock and bonded indebtedness the basis of taxation against said company, and protested against the injustice which would so be done to said company, all which will more fully and at large appear by reference to two communications which said railroad company caused to be laid before said State board of equalization, one of which said communications bears date on the 18th of August, 1874, and is signed by A. T. Hall, the treasurer of said company, a copy of which is herewith filed, marked "Exhibit B," and prayed to be taken and considered as a part of this bill; and the other of which said communications bears date on the 7th day of September, 1874, is signed by J. M. Walker, president of said company, and verified by the oath of said J. M. Walker, president, and A. T. Hall, treasurer, of said company, a copy of which said communication is herewith filed, marked "Exhibit C," and prayed to be taken and considered as a part of this bill.

42 And your orators further charge that said State board of equalization totally disregarded the information so as aforesaid laid before it by the said Chicago, Burlington and Quincy Railroad Company, and the protest of said company against the action of said board, and in defiance of said information and protest proceeded to, and did, compute and state the bonded indebtedness of said company at five million five hundred and forty thousand five hundred dollars, ($5,540,500,) more than said company ever had of bonded indebtedness, and the capital stock of said company at one million nine hundred and thirty-nine thousand two hundred and one dollars, ($1,939,201,) more than the stockholders in said company had of capital stock, and carried these sums into the estimate of the value of property upon which said company should be and was assessed for taxation by said State board of equalization.

Your orator, Henry P. Kidder, further states that he is the owner of one hundred shares of the capital stock of said Chicago, Burlington and Quincy Railroad Company, of one hundred dollars each, and the bonds above

referred to, and that as soon as it came to his knowledge that said State board of equalization had illegally and unjustly assessed said railroad company for taxation in an amount so exorbitant, and so disproportioned to the assessments against other railroad corporations in said State for the purpose of protecting his interests, and as stockholder in said Chicago, Burlington and Quincy Railroad Company, and of preventing the dividends upon his said stock from being diminished by the payment of the taxes so wrongfully assessed against said company, and to procure the security of his bonds, he made a written application to said company requesting it to take, promptly, all necessary steps to resist said taxation and to enjoin all proceedings to collect taxes upon said assessment, and to take all other necessary steps to defeat the same, and to protect the interests of your orator; but said company by a resolution passed by its board of directors on the 25th day of November, 1874, whilst recognizing and admitting the fact that said taxation was illegal, unjust, and not binding on the company, declined to resist the collection of the same; all which will more fully and at large appear by reference
43 to the proceedings of the said board of directors of the said Chicago, Burlington and Quincy Railroad Company, had at a meeting of said board held on the 25th day of November, 1874, a certified copy of which said proceedings is herewith filed, marked "Exhibit D," and prayed to be taken and considered as a part of this bill.

All which actings and doings of the said State board of equalization, and the refusal of the said Chicago, Burlington and Quincy Railroad Company to take the necessary and proper steps to prevent the collection of the taxes so, as aforesaid, illegally and unjustly assessed against said company, and to protect the interests of your orators as stockholders and bondholders in said company, tend greatly to the wrong, injury, and oppression of your orators in the premises; will work irreparable injury to your orators in the depreciation of their stock and bonds, and the diminution of their dividends, and endanger payment of the interest on said bonds, and will involve them and said company in a multiplicity of lawsuits if they shall be compelled to resort to proceedings at law for the protection of their interests.

And now so it is, may it please your honor, that the clerks of the said several counties hereinbefore mentioned are proceeding to, and will, unless restrained by the order of this honorable court, extend the taxes on the whole amount of the so-called capital stock so assessed against said Chicago, Burlington and Quincy Railroad Company by the State board of equalization for all purposes for which taxes are authorized by law to be levied and collected in said counties, and threaten to, and will, after the extension of the taxes upon said sum so illegally and unjustly assessed to said company under the designation of capital stock, deliver the books upon which such extensions are so made, with warrants thereto attached for the collection of taxes so extended against said company, to the collectors of said counties for collection; and said collectors of said counties threaten to, and will, unless restrained by the order of your honorable court, upon getting possession of said tax-books, proceed to collect said taxes so illegally, wrongfully, and unjustly assessed and extended against said company to the great wrong, injury, and oppression of said company and your orators in the premises.

44 In tender consideration whereof, and inasmuch as your orators are without remedy at and by the strict and direct rules of the common law, and can have adequate relief only in a court of equity, where matters of this and the like nature are properly cognizable and re-

lievable; to the end, therefore, your orators pray that the said Chicago, Burlington and Quincy Railroad Company, and Herman Lieb, clerk, and H. B. Miller, collector of taxes in and for the said county of Cook; and J. J. Cole, clerk, and Lewis C. Stover, treasurer and collector of taxes in and for the said county of DuPage; and John C. Sherwin, clerk, and Henry C. Paddock, collector of taxes in and for the said county of Kane; and Jeremiah Evarts, clerk, and T. S. Serrine, collector of taxes in and for the said county of Kendall; and C. M. Conrad, clerk, and Robert Hampton, collector of taxes in and for the said county of DeKalb; and James A. Hawley, clerk, and Josiah Little, collector of taxes in and for the said county of Lee; and Hubert A. McCaleb, clerk, and Samuel W. Raymond, collector of taxes in and for said county of LaSalle; and Melvin J. Keith, clerk, and Samuel Edwards, collector of taxes in and for said county of Bureau; and F. G. Wilton, clerk, and P. P. Beveridge, collector of taxes in and for the said county of Henry; and John S. Winter, clerk, and Edwin T. Ellett, collector of taxes in and for the said county of Knox; and William H. Sexton, clerk, and David D. Varry, collector of taxes in and for the said county of Warren; and David C. Hanna, clerk, and George Bell, sheriff and ex-officio collector of taxes in and for the said county of Henderson; and J. C. Warley, clerk, and Job Walker, collector of taxes in and for the said county of Fulton; and Allen L. Sparks, clerk, and Anthony Thornton, collector of taxes in and for the said county of McDonough; and George J. Rogers, clerk, and Peter Frey, collector in and for the said county of Hancock; and Willis Hazelwood, clerk, and Edwin Cleveland, collector of taxes in and for the said county of Adams; and D. J. Walker, clerk, and Orlando Brown, treasurer, in and for the said county of Stark; and John McClure, clerk, and Isaac Taylor, collector of taxes in and for the said county of Peoria; and John C. Scripps, clerk, and Edward D. Wells, collector of taxes in and
45 for the said county of Schuyler; and C. F. Durston, clerk, and William N. Graham, collector of taxes in and for the said county of Mercer; and Edward W. Payne, clerk, and W. H. Thatcher, collector of taxes in and for the said county of Whiteside, be made defendants to this bill, and that a summons issue against them, commanding them to appear and answer all and singular the allegations in said bill contained, as fully and particularly as if the same were herein again repeated and set out by way of interrogatory, but not under oath, which is hereby expressly waived.

And your orators further pray that a writ of injunction may be issued out of this honorable court, under the seal thereof, enjoining and restraining the said Chicago, Burlington and Quincy Railroad Company from paying the taxes, or any part thereof, on the said assessment of twelve million one hundred and twenty-three thousand six hundred and sixty-eight dollars, ($12,123,668,) made against it by the said State board of equalization, as and for and under the name and denomination of capital stock assessment; and also from paying the taxes or any part thereof upon said sum of $204,501.60, so doubly assessed against said company in Kane County; and also from paying the taxes or any part thereof upon said sum of $83,961 of the amount so doubly assessed against said company in Knox County; and also enjoining and restraining Herman Lieb, the clerk of said county of Cook; and J. J. Cole, the clerk of the said county of DuPage; and Jeremiah Evarts, the clerk of the said county of Kendall; and C. M. Conrad, the clerk of the said county of DeKalb; and James A. Hawley, the clerk of the said county of Lee; and Hubert A. McCaleb, the clerk of the said county of

LaSalle; and Melvin J. Keith, the clerk of the said county of Bureau; and F. G. Wilton, the clerk of the said county of Henry; and William H. Sexton, the clerk of the said county of Warren; and David C. Hanna, the clerk of the said county of Henderson; and J. C. Warley, the clerk of the said county of Fulton; and Allen L. Sparks, the clerk of the said county of McDonough; and George J. Rogers, the clerk of the said county of Hancock; and Willis Hazelwood, the clerk of the said county of Adams; and D. J. Walker, the clerk of the said county of Stark; and John D. McClure, the clerk of the said county of
46 Peoria; and John C. Scripps, the clerk of the said county of Schuyler; and C. F. Durston, the clerk of the said county of Mercer; and Edward W. Payne, the clerk of the said county of Whiteside, from extending any taxes whatever against the said Chicago, Burlington and Quincy Railroad Company upon the said sum of twelve million one hundred and twenty-three thousand six hundred and sixty-eight dollars ($12,123,668,) or upon any part thereof, or upon any sum or amount whatever assessed as aforesaid by the State board of equalization against said company upon capital stock, or as or for a capital stock assessment; and also enjoining and restraining said defendants' clerks as aforesaid, from delivering collector's books with such extensions of taxes thereon to the collectors of said counties for collection, and also enjoining, and restraining John C. Sherwin, clerk of the said county of Kane, and John S. Winter, clerk of the said county of Knox, from extending any taxes whatever against the said Chicago, Burlington and Quincy Railroad Company upon the said sum of twelve million one hundred and twenty-three thousand six hundred and sixty-eight dollars, ($12,123,668,) or upon any part thereof, or upon any sum or amount whatever, assessed as aforesaid by the said State board of equalization against said company upon capital stock, or as or for a capital stock assessment; and also enjoining and restraining the said defendant, John C. Sherwin, clerk of the said county of Kane, from extending any taxes whatever against said company upon the said sum of two hundred and four thousand five hundred and one dollars and sixty cents, so doubly assessed against said company in the county of Kane; and also enjoining and restraining the said defendant, John S. Winter, clerk of the said county of Knox, from extending any taxes whatever against said company upon the said sum of $83,961 of the amount so doubly assessed against said company in said county of Knox; and also enjoining both of said defendants, John C. Sherwin, clerk of said county of Kane, and John S. Winter, clerk of said county of Knox, from delivering collector's books, with extensions of taxes on the assessments aforesaid thereon, to the collectors of said counties, or to the col-
47 lectors of either of said counties for collection; and also enjoining and restraining H. B. Miller, the collector of the said county of Cook, and Lewis C. Stover, the collector of the said county of Du Page, and Henry C. Paddock, collector of the said county of Kane, and T. S. Serrine, collector of the said county of Kendall, and Robert Hampton, collector of the said county of De Kalb, and Josiah Little, collector of the said county of Lee, and Samuel W. Raymond, collector of the said county of La Salle, and Samuel Edwards, collector of the said county of Bureau, and P. P. Beveridge, collector of the said county of Henry, and Edwin T. Ellett, collector of the said county of Knox, and David D. Varry, collector of the said county of Warren, and George Bell, sheriff and ex-officio collector of the said county of Henderson, and Job Walker, collector of the said county of Fulton, and Anthony Thornton, collector of the said county of McDonough, and Peter Frey, collector of

the said county of Hancock, and Edwin Cleveland, collector of the said county of Adams, and Orlando Brown, collector of the said county of Stark, and Isaac Taylor, collector of the said county of Peoria, and Edward D. Wells, collector of the said county of Schuyler, and William N. Graham, collector of the said county of Mercer, and W. H. Thacher, collector of the said county of Whiteside, from collecting the taxes, or any part thereof, which may be so extended against the said Chicago, Burlington and Quincy Railroad Company, upon the said sum of twelve million one hundred and twenty-three thousand six hundred and sixty-eight dollars ($12,123,668,) or upon any part thereof assessed against said company as capital stock, by the said State board of equalization; and also enjoining and restraining the said defendant, Henry C. Paddock, the collector of the said county of Kane, from collecting the taxes, or any part thereof, which may be extended on said collector's book, against said Chicago, Burlington and Quincy Railroad Company upon the said sum of $204,501.60, of the amount so doubly assessed against said company in the said county of Kane; and also enjoining and restraining the said defendant, Edwin T. Ellet, collector of the said county of Knox, from collecting the taxes, or any part thereof which may be extended upon said collector's book against said Chicago, Burlington and Quincy Railroad Company, upon the said sum of
48 $83,961 of the amount so doubly assessed against said company in the said county of Knox.

And upon a final hearing hereof, your orators pray that the said injunction be made perpetual, and that the said assessment so made against said Chicago, Burlington and Quincy Railroad Company by the said State board of equalization upon the said sum of twelve million one hundred and twenty-three thousand six hundred and sixty-eight dollars ($12,123,668,) and that $204,501.60 of the amount so doubly assessed against said company in Kane County, and that eighty-three thousand nine hundred and sixty-one dollars, ($83,961,) so doubly assessed against said company in Knox County, may be decreed by your honor to be illegal, null, and void, and of no binding force or effect against said company or your orators, and grant to your orators such other and further relief as to equity and the nature of their case may belong; and your orators, as in duty bound, will ever pray, etc.

DEXTER & SMITH,
Solrs. for Complts.

O. H. BROWNING, *of Counsel.*

49 EXHIBIT 1.

An act granting a charter to the Aurora Branch Railroad Company.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That all such persons as shall become stockholders agreeably to the provisions of this act in the corporation hereby created shall be, and for the term of seventy years from and after the passage of this act shall continue to be, a body corporate and politic by the name of the "Aurora Branch Railroad Company," and by that name shall have succession for the term of years above specified; may sue and be sued, complain and defend in any court of law or equity; may make and use a common seal, and alter the same at pleasure; may make by-laws, rules, and regulations for the management of property, the regulation of its affairs, and the transfer of its stock, not inconsistent with the existing laws and constitution of this State and of the United States;

and may, moreover, appoint such subordinate agents, officers, and servants as the business of the said corporation may require, and allow to them a suitable compensation; prescribe their duties, and require bond for the faithful performance thereof in such penal sums and with such sureties as they may choose, who shall hold their offices during the pleasure of a majority of the directors of said corporation.

§ 2. The said corporation shall have the right, and during its continuance to maintain and continue a railroad with a single or double track, and with such appendages as may be deemed necessary for the convenient use of the same, from the town of Aurora, in the county of Kane, to some eligible and convenient point in the county of Du Page, there to connect with the Galena and *and* Chicago Union Railroad.

§ 3. The capital stock of said corporation shall be one hundred thousand dollars, which shall be deemed personal property, and shall be divided into shares of one hundred dollars each. The capital stock of said corporation may at any time hereafter be increased to a sum
50 not exceeding one million of dollars, if the same shall be judged necessary to the completion of the said work, and the same shall be subscribed for and taken under the direction of the directors of the said corporation, at such time and place as may be by them deemed expedient.

§ 4. That A. C. Gibson, Benj. Hackney, Chas. Hoyt, E. R. Allen, and Stephen F. Gale shall be commissioners for securing subscriptions to the capital stock of said corporation. Each subscriber, at the time of subscribing, shall pay to the commissioners one dollar on each share of the stock subscribed for by him; and the said commissioners shall, as soon as the directors are elected, deliver to them the whole amount so received.

§ 5. The affairs of said corporation shall be managed by a board of five directors, to be annually chosen by the stockholders from among themselves, as soon as may be after one-fourth of the stock is subscribed; at which time they may commence the work. The commissioners shall give notice of the time and place at which a meeting of the stockholders will be held for the choice of directors, and at such time and place appointed for that purpose the commissioners, or a majority of them, shall attend and act as inspectors of said election, and the stockholders present shall proceed to elect their directors by ballot, and the commissioners present shall certify the result of such election under their hands; which certificate shall be recorded in the books of the corporation, and shall be sufficient evidence of the election of the directors therein named. All further elections shall be held at the time and in the manner prescribed by the by-laws and regulations of the said incorporation. Each stockholder shall be allowed as many votes as he owns shares at the commencement of such election, and a plurality of votes shall determine the choice, but no stockholder shall be allowed to vote at any election after the first for any stock which shall have been assigned to him within thirty days previous to holding such election. The said directors shall hold their office for one year after their election, and shall elect one of their number as president of the board.

§ 6. The said corporation is authorized to contract, make, and use a single or double railroad or way of suitable width and dimensions, to be determined by the said corporation, on the line, course, or
51 way, which may be designated and selected by the directors as the line, course, or way whereon to construct and make the same, and shall have power to regulate the time and manner in which goods, effects, and passengers shall be transported, taken, and carried on the

same, and to prescribe the manner in which the said railroad should be used, by what force the carriages to be used thereon may be propelled, and the rate of toll for transportation of persons or property thereon, as may be deemed suitable to their interests; and it shall be lawful, also, for the said corporation to unite with any other railroad company upon such terms as may be agreed upon by the directors of said companies, and also to construct such other and lateral routes as may be necessary to connect them with any other route or routes as may be deemed expedient.

§ 7. In case the corporation shall not be able to acquire the title to the lands through which said road shall be laid by purchase or voluntary cession, it shall be lawful for the corporation to appropriate so much of said land as may be necessary for its own use, for the purpose contemplated by this act, on complying with laws made and provided to govern such matters on all public works.

§ 8. The board of directors shall hereafter consist of such number of directors as shall be determined upon from time to time by the stockholders of said company, at any meeting thereof for the choice of diectors, provided that such number shall not be less than five nor more than eleven. Such directors shall be stockholders in said company, and shall be elected annually by the stockholders, either in person or by proxy, and shall hold their offices for one year, and until their successors shall be elected and qualified. But any vacancy occurring in said board between elections may be filled by the board at any legal meeting of the directors, and the person so elected to fill the vacancy shall hold his office until the next annual meeting.

§ 9. The said corporation shall be allowed two years from the passage of this act for the commencement of the construction of said work; and in case the same shall not be completed within five years thereafter, the privileges therein granted shall be forfeited.

52 § 10. The said corporation shall be bound to repair all public highways, bridges, water-courses which may be injured in constructing said railroad or its appendages, and shall restore them, as far as practicable, to as good a condition as they were before they were injured.

§ 11. Any person who shall willfully injure said railroad or any of the appendages thereto, shall be deemed guilty of a misdemeanor, and shall forfeit to the use of the corporation a sum equal to three times the amount of damages occasioned by such injury, to be recovered with costs of suit, in the name of such corporation, in an action of debt before any court having cognizance thereof (or) before any justice of the peace in the county where such offence may have been committed.

§ 12. This act shall be deemed and taken as a public act, and shall be construed beneficially for all purposes herein specified or intended; and all copies thereof printed by or under the direction of the general assembly of this State shall be received in all courts and places whatsoever in said State as sufficient evidence thereof, without further proof.

§ 13. For the purpose of facilitating the construction of said railroad said company are hereby authorized to negotiate loans to the amount of the capital stock, and to pledge all its personal and real property for the security thereof; provided, that the individuals of said corporation shall be liable to the extent of their stock, for the payment of its debts.

§ 14. This bill to take effect from and after its passage.

Approved, February 12, 1849.

EXHIBIT 2.

An act to amend the charter of the Aurora Branch Railroad Company.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That the company incorporated by an act entitled "An act granting a charter to the Aurora Branch Railroad Company," approved February 12, 1849, be and is hereby authorized to extend its road from Aurora, in Kane County, crossing Fox River at a point not farther south than the present mill-dam across
53 Fox River, in the village of Aurora, in said county, in the most direct practicable line; thence in a southwesterly direction, on the most direct practicable route to a point of at least fifteen miles north of LaSalle, and where such extension may intersect any railroad built or to be built northward from the town of LaSalle, in LaSalle County, and there to form a connection with any such railroad.

§ 2. The said company is hereby authorized to use and exercise all the powers for obtaining the right of way for the use of said company in the construction of said road that are given and expressed by the acts to provide for a general system of railroad incorporations, approved November 5th, 1849; and the name of said company is hereby changed to that of "Chicago and Aurora Railroad Company." Said company is also authorized and empowered to increase its capital stock to a sum not exceeding two millions of dollars.

§ 3. This act to take effect and be in force from and after its passage.

Approved June 22, 1852.

EXHIBIT 3.

An act to amend the charter of the Chicago and Aurora Railroad Company.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That the said Chicago and Aurora Railroad Company be and is hereby authorized to construct a branch from its main line from the village of Aurora, in Kane County, to and into the city of Chicago, by the way of the village of Naperville, and acquire and hold depot and station ground, and such other lands as may be required for the business of the company in said city, and for such purposes may acquire the title to such lands by voluntary purchases, or under the existing laws in such case made and provided.

§ 2. The name of said company shall be changed to that of the Chicago and South Western Railroad Company.

§ 3. The said company and the Central Military Tract Railroad
54 Company, the Northern Cross Railroad Company, and the Peoria and Oquawka Railroad Company, or any two or more of said companies, shall be and are hereby authorized to consolidate their stocks so as to form one stock and one company, upon such terms as may be agreed upon, and may assume the name of either as a common name, or may adopt such new name as the consolidated company may adopt, upon filing with the secretary of state a certificate under the corporate seal of the company of the name selected and its adoption, and may elect the charter of either of said companies thus agreeing to consolidate as the charter of the consolidated company, certifying and filing certificate of said election in like manner; and it shall also be

competent for either of said companies to lease, sell, or dispose of any part of its road to either of the others, with the right to complete, maintain, operate, and manage the same upon such terms and conditions as may be agreed upon between them.

§ 4. The provisions of this act shall not affect the power now in the city of Chicago to regulate the location of the road within the bounds of the city of Chicago.

Approved February 28, 1854.

EXHIBIT 4.

An act to amend an act entitled "An act to amend the charter of the Chicago & Aurora Railroad Company," approved February 28, 1854.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That section two of the said act be, and the same is hereby, repealed, and the corporate name of the said company shall be, and is hereby changed to "The Chicago, Burlington and Quincy Railroad Company," by which name and designation it shall be authorized to contract and carry on its corporate business, and also to complete and carry out and execute, and also avail itself of all existing contracts, and the benefits thereof, as if the name of said company had not been changed.

§ 2. This act shall take effect and be in force from and after its passage.

Approved February 14th, 1855.

55 EXHIBIT 5.

An act to incorporate the Central Military Tract Railroad Company.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That William McMurtry, C. S. Colton, Jas. Bunce, W. Selden Gale, H. H. May, G. C. Lamphere, William A. Wood, Alfred Brown, Alva Wheeler, Peter Grouse, Amos Ward, Patrick Dunn, Daniel Meeks, Silas Willard, A. C. Wiley, and their associates and successors be, and they are hereby, created a body corporate, with perpetual succession, under the name and style of the "Central Military Tract Railroad Company," for the purpose of constructing, holding, and using the railroad hereinafter mentioned.

§ 2. The said corporation are hereby authorized and empowered to construct, establish, hold, and use a railroad commencing at Galesburg, in the county of Knox, and running from thence in a northeasterly direction on the most direct and eligible route to, and to connect with the Rock Island and La Salle Railroad, at such point in the county of Henry or Bureau as the said company hereby incorporated may designate.

§ 3. The said company is hereby created and incorporated for the purpose of organizing under an act entitled "An act to provide for a general system of railroad incorporations," in force November 5th, 1849, and in all things shall be governed by the provisions thereof, and shall be entitled to have and exercise the powers and privileges, and be subject to the liabilities therein enumerated: Provided that the foregoing corporation may attach themselves to and form a part of the Northern Cross Railroad Company, in such manner or on such terms as said companies shall agree.

§ 4. The said company is hereby authorized and empowered to bor-

row money for the construction of said road, and for the purchase of the rolling-stock, fixtures, etc., and to pledge the road and the property of said company for the payment of the said moneys so borrowed.

§ 5. This act to take effect from and after its passage.

Approved February 15th, 1851.

56 EXHIBIT 6.

An act to amend an act entitled "An act to incorporate the Central Military Tract Railroad Company."

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That William McMurtry, George C. Lamphere, James Bunce, Silas Willard, Chauncey S. Colton, Alfred Brown, Edwin G. Ellet, Edward Hollister, Amos Ward, Sylvester Blish, Barney M. Jackson, Myrtle G. Brace, and William Maxwell, and their associates, subscribers to the stock of the Central Military Tract Railroad Company, and all such persons as shall hereafter become stockholders in said company, shall be and are hereby declared a body politic and corporate by the name and style of "Central Military Tract Railroad Company," with perpetual succession, and under that name and style shall be capable of suing and being sued, implead and being impleaded, defending and being defended against, in law and equity, in all courts and places whatsoever, in like manner and as fully as natural persons; may make and use a common seal, and alter or renew the same at pleasure; and by their said corporate name and style shall be capable in law of contracting and being contracted with; shall be and are hereby declared invested with all the powers, privileges, immunities, and franchises, and of acquiring, by purchase or otherwise, and holding and conveying real and personal estate, which may be needful to carry into effect fully the purposes and objects of this act.

§ 2. The said corporation is hereby authorized and empowered to survey, locate, construct, complete, alter, maintain, and operate a railroad with one or more tracks from the town of Galesburg, in the county of Knox, in a northeasterly direction, on the most direct and eligible route towards the city of Chicago to a point to be designated by the said company on or near the line of the Chicago and Rock Island Railroad, or on or near the line of any other railroad or railroads connecting with or extending to the said city of Chicago, with a branch of the same, to the town of Henderson, in the county of Knox.

57 § 3. The said corporation shall have the right of way upon, and may appropriate to its sole use and control, for the purposes contemplated herein, but not exceeding two hundred feet in width through its entire length, may enter upon and take possession of, and use all and singular any lands, streams, and materials of every kind, for the location of depots and stopping-stages; for the purpose of constructing bridges, dams, embankments, excavations, station-grounds, spoil-banks, turnouts, engine-houses, shops, and other buildings necessary for the construction, completing, altering, maintaining, preserving, and complete operation of said road. All such lands, waters, materials, and privileges belonging to the State are hereby granted to said corporation for said purposes; but when owned or belonging to any person, company, or corporation, and cannot be obtained by voluntary grant or release, the same may be taken and paid for, if any damages are awarded, in the manner provided in "an act to provide for a general system of railroad incorporations," approved November fifth, one thousand eight

hundred and forty-nine, and the final decision or award shall vest in the corporation all the rights, franchises, and immunities in said act contemplated and provided: Provided, that the appeal allowed by the provisions of the aforesaid act shall not affect the possession by said company of the land appraised; and when the appeal is made by others than the company, the same shall not be allowed, except on a stipulation of the party appealing that the said company may enter upon and use the lands described in the petition for the uses and purposes in said petition set forth, upon said company giving bond and security, to be approved by the clerk of said court, that they will pay all costs and damages that may be awarded against said company on the hearing of said appeal. The said company shall have power and authority to receive, take, and hold all such voluntary grants and donations of land and real estate for the purposes of said railroad as may have been or shall be made to said company to aid in the construction, accom'odation, and maintenance of said railroad; and said company may contract and agree with the owners or occupiers of any land upon which said company may wish to construct said railroad, or which said company may wish to use
58 or occupy for the purpose of procuring materials to be used in or about the construction, maintenance, or enjoyment of said railroad, *of* which said company may wish to use or occupy for any purpose connected with said railroad.

§ 4. The capital stock of said company shall be one hundred thousand dollars, which may be increased from time to time by a vote of a majority in interest of the stockholders at their annual meeting, or at any special meeting which shall be called for the purpose by the directors of said company, to any sum not exceeding the amount required to be expended on account of said road; which stock shall be divided in shares of one hundred dollars each, which shall be deemed personal property, and may be issued, certified, transferred, and registered in such manner and at such places as may be ordered and directed by the board of directors. The board of directors shall require payment of the capital stock subscribed in such sums, at such times, and in such proportions, and on such conditions as they shall see fit, under the penalty of the forfeiture of all previous payments thereon, and shall give notice to the stockholders of the payments thus required, and of the place when and where the same are to be paid, at least thirty days previous to the payment of the same. The said board of directors shall cause the books to be kept open until the full amount of the capital stock as above provided is subscribed; and when additional stock shall be voted by the stockholders as above provided, the directors shall cause books to be opened for subscription to said stock, in such manner and at such time and places as they shall direct.

§ 5. All the corporate powers of said company shall be vested in and exercised by a board of directors, and such officers and agents as they shall appoint. The board of directors shall consist of thirteen stockholders, six of whom shall be resident within fifteen miles of the line of said railroad as heretofore located, and the remainder of whom may or may not be residents of the State. The board of directors shall be chosen every year by the stockholders, each share having one vote, to be given in person or by proxy, and shall hold their offices until their successors shall be elected and qualified. Vacancies in the board
59 may be filled by a vote of two-thirds of the directors remaining. Such appointees to hold their offices until the next election of directors. Other officers, agents, and servants, whether members of the board or otherwise, may be appointed, employed, paid, and dismissed,

under such rules and regulations as the board of directors may from time to time adopt, until the first Wednesday of June, 1853. The board of directors shall consist of William McMurtry, George C. Lamphere, James Bunce, Silas Willard, Chauncey S. Colton, Edwin G. Ellet, Edward Hollister, Amos Ward, Sylvester Blish, Barney M. Jackson, Myrtle G. Brace, William Maxwell, and Alfred Brown. Upon the first Wednesday of June, 1853, and annually thereafter on each first Wednesday of June, shall be held the annual meeting of the stockholders at which the directors shall be elected. All meetings of the directors shall be at such place as the board may appoint, and of the stockholders shall be held at the town of Galesburg, or at some place not more than five miles from the line of said railroad. All meetings of the stockholders, except the annual meetings, shall be called by the directors, and notice of such meeting shall be published at least twenty days before the time appointed for such meeting in some newspaper published in the vicinity of the railroad. If at any meeting of the stockholders a majority of the stock shall not be represented, either by the holders in person or by proxy, no business shall be done; but the stockholders present may adjourn from day to day until a majority of the stock is represented at the meeting. Whenever the entire amount of the capital stock as hereinafter provided shall have been subscribed, it shall be the duty of the directors then in office to call a meeting of the stockholders for the purpose of electing new directors. Upon the election and qualification of such newly-elected directors the term of the old directors shall expire, and the newly-elected directors shall hold until the regular election at the next annual meeting.

§ 6. The said company shall have power to make, ordain, and establish all such by-laws, rules, and regulations as may be deemed expedient and necessary to fulfill the purposes and carry into effect the provisions of this act, and for the well-ordering, regulating, and securing the affairs, business, and interest of the company: Provided, that the same be not repugnant to the Constitution and laws of the United States or of this State, or repugnant to this act. The board of directors shall have power to establish such rates of toll for the conveyance of persons or property upon the same, as they shall, from time to time, by their by-laws, determine, and to levy and collect the same for the use of the said company. The transportation of persons and property, the width of track, and all other matters and things respecting the use of said road, shall be in conformity to such rules and regulations as the said board of directors shall from time to time determine.

§ 7. If any person shall carelessly, willfully, maliciously, or wantonly, delay, hinder, or obstruct the passage of any carriage on said road or branches, or shall place, or cause to be placed, any material thereon, or in any way trespass upon, spoil, injure, or destroy said road or branches, or any part thereof, or anything belonging or pertaining thereto, or employed or used in connection with its location, survey, construction, or management, all persons committing, or aiding and abetting in the commission of such trespass or offense, shall forfeit and pay to the said company treble such damages as shall be found before any court of competent jurisdiction. And further, such offender shall be liable to indictment in the county within whose jurisdiction the offense may be committed, and to pay a fine of not less than thirty nor more than one hundred dollars to the use of the people of the State of Illinois, or may be imprisoned in the penitentiary for a term not exceeding five years, in the discretion of the court before whom the same shall be tried.

§ 8. Said company may construct their said road on, or across, any

stream of water or water-course, road, highway, railroad or canal, which the route of its road shall intersect; but the corporation shall restore the stream or water-course, road or highway, thus intersected, to its former state, or in a sufficient manner, not to have impaired its usefulness. Whenever the route of the said railroad shall intersect any road or highway, the said company shall have power to change the line of such road or highway, if such change shall be desirable, and shall not impair the usefulness of such road or highway, and the said
61 company may take such additional lands for the construction of such roads or highways as may be deemed requisite by said company. Unless the lands so taken shall be purchased, or voluntarily given, compensation therefor shall be ascertained in the manner in this act provided, as nearly as may be, and duly made by said company to the owner or person interested in such lands, the same when so taken to become part of such intersecting road or highway, in such manner and by such time, as the adjacent parts of the same highway may be held for highway purposes.

§ 9. And when the route of the said road shall intersect, cross or connect with, or run along or upon the line of any other railroad, the said company shall join with such other company in making all necessary turnouts, sidings, and switch and other conveniences necessary to further the objects of such connection, and when the route of any other company shall be occupied as aforesaid, just compensation shall be made to such other company for all expenditures made by them in the location of such road, and all connections with other roads, as aforesaid, shall be made, and facilities in the transhipment of freight and passengers, and interchange of cars afforded by each over the respective roads upon fair and equitable terms, and in case the said companies cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossing and connection, the transhipment of freight and passengers, the interchange of cars, the same shall be ascertained and determined by three commissioners; one to be chosen by each of said companies, and the two so chosen to choose a third; and, in case they cannot agree upon the choice of the third person, he shall be appointed by the judge of the district court of the United States, for the district of Illinois, and the decision of the three so chosen to be final.

§ 10. Said company is hereby authorized from time to time to borrow such sum of money as may [be] necessary for completing and finishing, or operating their said railroad, and to issue and dispose of their bonds for any amount so borrowed, and to mortgage their corporate property, and franchises, or convey the same by deed of trust, to secure the payment of any debt contracted by said company for the purpose aforesaid, and the directors of said company may make the bonds, issued as
62 aforesaid convertible into stock, at the option of the holder thereof, at any time, not exceeding ten years, from the date of such bond.

§ 11. The said company shall prosecute the construction of the said road with all practicable speed, commencing the construction at or near the northern terminus thereof, and shall complete the same to the town of Galesburg and Henderson, within eighteen months after the said road shall be constructed, within fifteen miles of the town of Galesburg.

§ 12. This act shall be deemed a public act, and shall be in force from and after its passage.

Approved June 19th, 1852.

EXHIBIT 7.

An act to enable railroad and plank-road companies to consolidate their stock.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That all railroad companies and plank-road companies now organized or hereafter to be organized, which now have or hereafter may have their termini fixed by law, whenever their said road or roads intersect by continuous lines, be and the same are hereby authorized and empowered to consolidate their property and stock with each other, and to consolidate with companies out of this State whenever their lines connect with the lines of such companies out of this State.

§ 2. Such consolidation may take place whenever the said companies shall respectively agree upon the terms and conditions of the same, and the said companies, when so consolidated, shall be authorized to agree upon the name or names of such consolidated company, and by such name or names the said consolidated company shall be a body corporate and politic, shall have a common seal or seals, and by such name or names shall be respectively contracted with and make contracts, shall sue and be sued, implead and be impleaded with, and shall have all the powers, franchises, and immunities which the said respective companies shall have by virtue of their respective charters, be-
63 fore such consolidation passed within the State of Illinois: Provided, that each consolidated company shall file for record, in the office of the secretary of state, a copy of their said articles of consolidation, evidenced by the signature of the presiding officer of each of the said companies and the corporate seal thereof.

§ 3. The corporation or corporations formed by virtue of the provisions of this act shall have power to increase their capital stock to any amount required by resolution of their respective boards of directors, not exceeding the amount of the cost of the roads and works constructed and equipped by them; to borrow money and fix the rate of interest therefor; to issue bonds, and the same to sell at such price as they may deem expedient, such sales being hereby authorized and confirmed, and to make any other contracts authorized by the by-laws of such corporation or corporations within the purview of the said charters.

§ 4. Such corporation or corporations, when so formed, shall have the same power to consolidate with other companies when their lines connect, upon such terms as may be agreed upon by them respectively.

§ 5. No company in this State shall be authorized under the provisions of this act to consolidate with any company beyond the limits of the State, until the termini of such company in this State shall first have been fixed by the laws of this State at the boundary line thereof.

§ 6. This act shall not be so construed as to authorize any plank road not having power to build a railroad, to consolidate with any railroad so as to lay a railroad upon any plank-road track, until the termini of such railroad shall have been expressly fixed by law, nor shall any plank road so consolidate with any railroad unless authorized by law to lay a railroad track.

§ 7. All proceedings for the purpose of consolidation, as above provided, shall be fixed and regulated by the by-laws of the respective companies desiring such consolidation: Provided, that such consolidation shall not take place until the terms of such consolidation shall have been approved by a majority of the stockholders in interest, in

person, or by proxy, at an annual or called meeting, of which due notice shall be given by publication or in writing to all stockholders interested, or the same be approved by the written consent of a
64 majority of stockholders in interest, filed in the office of their company.

§ 8. When it shall be necessary for the construction of any railroad to cross the track of any other railroad, stream of water, water-course, road, or highway, which it may intersect or cross by reason of such extension, into or through any adjoining State, or by reason of its consolidation with any other road or roads, company or companies, as provided in this act, it shall be lawful for said company to construct their road across or over the same by such track or tracks, bridge or bridges, viaduct or viaducts, as may be necessary to the convenience of the extension or consolidation of said road; provided said company shall restore the railroad, stream of water, water-course, road or highway thus intersected or crossed, to its former state, or in a sufficient manner not materially to interfere with its usefulness.

§ 9. This act shall take effect from and after its passage.

Approved February 28, 1854.

EXHIBIT 8.

Articles of consolidation, made and entered into and agreed upon between the Chicago, Burlington and Quincy Railroad Company, and the Central Military Tract Railroad Company, this ninth day of July, A. D. 1856.

Whereas the said companies have their termini fixed by their several acts of incorporation, and constitute a continuous line of railroad, and are, therefore, under the laws of the State of Illinois, authorized to consolidate their stock and property with each other; and whereas by a resolution of the board of directors of both of said companies, passed on the fourth and fifth days of June last, the following was submitted to the stockholders, in each of the said companies, respectively, as a plan, and as the terms suitable and proper upon which to consolidate the stock and property of the said two companies with each other, viz:

The name of the consolidated company shall be the Chicago, Burlington and Quincy Railroad Company.

65 Each stockholder in the Central Military Tract Railroad Company, in exchange for every share of stock he may hold in that company, shall be entitled to one share of the stock in the consolidated company.

Each stockholder in the Chicago, Burlington and Quincy Railroad Company shall be entitled to one share of the stock of the consolidated company for every share he may hold in that company, and in addition thereto shall be entitled to one share of the consolidated stock for every two shares held in that company upon the payment therefor within one year of fifty dollars, with interest thereon at the rate of ten per cent. per annum; and in case any stockholder shall be entitled to a fraction of a share, he may receive a whole share on payment of eighty dollars therefor and interest as above, or, if he elect not to receive said share, he shall be paid twenty dollars for said fractional share.

A majority of the stockholders in interest shall signify their assent to these terms of consolidation on or before the ninth day of July, this next now instant.

And whereas a very large majority in interest in the stock in each of

said companies have signified by proxies in writing, and by their proxies at the meeting of the stockholders of each of the said companies, held at Chicago, this the ninth day of July, 1856, for that purpose, their approval and assent to the terms of their consolidation, in accordance with the statute in such case made and provided:

Now, therefore, in consideration of the above premises, it is mutually covenanted and agreed by and between the said parties, as follows, to wit:

First. That their entire corporate property and stock be, and the same are hereby consolidated, and that the said consolidation shall take effect from this date, and from thenceforth the said companies shall constitute but one corporation in the law.

Second. The name of the said consolidated company shall be the Chicago, Burlington and Quincy Railroad Company, by which name it shall act and be described, with all the powers and privileges conferred upon it by their original charter, and the act of the general assembly authorizing consolidations in these cases.

66 Third. The stockholders in the Central Military Tract Railroad Company shall be entitled to one share of stock in the consolidated company for every share held by him or her in that company in exchange therefor.

Fourth. Each stockholder in the Chicago, Burlington and Quincy Railroad Company shall be entitled to one share of stock in the consolidated company in exchange for each share held by him in that company, and in addition thereto shall be entitled to one share in the consolidated company for every two shares so held, upon payment therefor within one year of sixty dollars for every such share, with ten per cent. interest thereon; and in case any stockholder under this arragement shall be entitled to a fractional share, he shall receive a whole share upon payment of eighty dollars therefor, or, if he shall not elect to receive the same, he shall be paid twenty dollars for said fractional share.

Fifth. As a consequence of said consolidation, the consolidated company becomes liable for and assumes all the contracts, obligations, and liabilities of each of the consolidating companies.

In witness whereof, the said parties have hereunto set their seals, the day and year first above written, by their respective presidents.

C. B. & Q. R. R. COMPANY
AMOS HALL, *Sec'y.*

J. F. JOY,
Pres. C. B. & Q. R. R. Co.

CENTRAL MILITARY TRACT.
DAVID SANBORN, *Sec.*

J. F. JOY,
Pres. C. M. T. R. R. Co.

UNITED STATES OF AMERICA,
State of Illinois ss:

OFFICE OF SECRETARY.

I, George H. Harlow, secretary of the State of Illinois, do hereby certify that the foregoing is a true copy of articles of consolidation between the Chicago, Burlington and Quincy Railroad Company and the Central Military Tract Railroad Company, filed in this office on the 14th day of July, 1856, and now on file in this office.

67 In witness whereof, I hereto set my hand, and affix the great seal of State, at the city of Springfield, this 24th day of March, A. D. 1874.

SEAL OF THE STATE OF ILLINOIS. AUGUST 18, 1818.

GEO. H. HARLOW,
Secretary of State.

STATE OF ILLINOIS,
County of Cook ss :

I, Lester O. Goddard, notary public in and for said county and State, do hereby certify that the foregoing copy of agreement for consolidation, and the certificate of the secretary of state of Illinois attached thereto, are correct and true copies of the original agreement and certificate, on file in the treasurer's office of the Chicago, Burlington and Quincy Railroad Company, having myself compared said copies with the originals.

Witness my hand and notarial seal, this twenty-fourth day of March, A. D. 1874.

[NOTARIAL SEAL.] LESTER O. GODDARD.
Notary Public.

EXHIBIT 9.

An act to incorporate the Northern Cross Railroad Company.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That James M. Pitman, Samuel Holmes, John Wood, Calvin A. Warren, Gresham B. Dimock, Hiram Boyle, and Isaac N. Morris, of the county of Adams, and James Brockman and James W. Singleton, of the county of Brown, and their associates, successors, and assigns, are hereby created a body politic and corporate, under the name and style of the "Northern Cross Railroad Company," and by that name and style shall have perpetual succession; and said company are hereby made capable of suing and being sued, of pleading and being impleaded, of defending and being defended in all courts in law and equity and other places, of contracting and being contracted with; and said company shall have authority to
68 make, have, and use a common seal, and the same to renew and alter at pleasure; and said company are hereby vested with all powers, privileges and immunities which are or may be necessary to carry into effect the objects and purposes of this act, hereinafter mentioned, set forth or referred to, and to exercise and enjoy, for the purposes of said company, the rights and privileges of natural persons.

§ 2. Said company are hereby authorized and empowered to locate, construct, establish, and finally complete and hereafter use, a railroad commencing at any convenient point on the west bank of the Illinois River, opposite the town of Meredosia, and running from thence on the most eligible, beneficial, expedient, and practical route to the Mississippi River, at the city of Quincy, in the county of Adams. And the said company are hereby empowered, in the construction of said railroad, to lay out said railroad wide enough for a single or double track throughout the whole length; and for the purpose of constructing the same, and for materials, stone, earth, and gravel, may take and use as much more land on the sides of the same as may be necessary for the proper construction and security of said railroad. Said company, in the construction of said railroad, shall adopt the route of that portion of the Northern Cross Railroad between the Illinois and Mississippi rivers, as laid out and surveyed by this State, but shall have the right to depart from said route at such points as may be necessary or advisable for better ground, shorter distance, or cheapness of construction: Provided, That said company, in the construction of said railroad, shall terminate the same at a point opposite Meredosia.

§ 3. Said company, in the construction, completion, and use of said railroad, shall have the right to use, enjoy, and have all right of way in

any manner held, owned, obtained, or secured by this State for or in the construction of that portion of the Northern Cross Railroad which lies between the Illinois and Mississippi rivers, and also all materials, stone, embankments, excavation, or other valuable thing secured, made, obtained, owned, or held by this State, and of or belonging to said portion of said Northern Cross Railroad, should they become the purchaser thereof. And it shall be the duty of the governor of this State, on request of said company in writing, to sell at public sale, to the highest bidder, for any State indebtedness, payable in ninety days after the day of sale, all interest, right of way, excavation, embankment, or other valuable thing owned, secured, or held by this State, as aforesaid, in, of, or in any manner belonging to that portion of the Northern Cross Railroad aforesaid, after giving sixty days' notice of the time and place of such sale in some public newspaper published in the county of Adams or Brown, and to execute a certificate of purchase therefor to the purchaser thereof, which said sale and certificate of purchase shall vest in such purchaser all and every right aforesaid of this State thereto and therein for the purposes of a railroad, and none other. All laws and parts of laws heretofore passed appropriating said portion of said Northern Cross Railroad, or any part thereof, to any other purposes than for a railroad are hereby repealed.

§ 4. The capital stock of said company shall be one million of dollars, and may be increased to two millions of dollars, to be divided into shares of one hundred dollars each share. The immediate government, control, and direction of the affairs and organization of said company and company franchises shall be vested in the persons named in the first section of this act, and a majority of them shall form a quorum, with power and authority to adopt such rules and by-laws, and other things to do and perform necessary to the complete organization of said company and to conducting the same, and to provide for opening books and obtaining subscriptions to the capital stock of said company, and for the calling of meetings of said company; and when one hundred shares of the capital stock of said company shall be taken and subscribed for, the said company may fully organize and go into operation in the construction and completion of said railroad.

§ 5. When said one hundred shares shall be subscribed as aforesaid, the persons named in the first section of this act, or some of them, may call a meeting of the stockholders of said company on giving public notice of the time and place of meeting, which shall be held at some place in the county of Adams or Brown, in this State, and shall fully organize said company by the election of five directors for said company, who shall hold their offices for one year and until their successors shall be elected and qualified. Said directors shall have the same powers and authority, and perform the same duties, and be governed by the same rules conferred upon and required of the directors of the Alton and Sangamon Railroad Company by an act entitled "An act to construct a railroad from Alton, in Madison County, to Springfield, in Sangamon County," approved February 27th, A. D. 1847. Said directors, so elected, shall elect from their number one president, who shall hold his office for one year and until his successor is elected and qualified, and who shall have the same powers and be governed by the same rules as *is* conferred upon and required of the president of the Alton and Sangamon Railroad Company by the act aforesaid, and all rules and provisions for elections provided by the said act shall apply to the company incorporated by this act. A majority of said directors, including said president, shall constitute a quorum.

§ 6. The said company hereby incorporated shall have, enjoy, and exercise all and singular the powers, rights, authorities, privileges, and immunities conferred upon the Alton and Sangamon Railroad Company by the act incorporating the same, described in the fifth section of this act as "An act to construct a railroad from Alton, in Madison County, to Springfield, in Sangamon County," approved February 27th, 1847, and not contrary to the provisions of this act; and all privileges, powers, and immunities, in any manner conferred upon the Alton and Sangamon Railroad Company by the said act incorporating the same, and beneficial to the corporation hereby created, shall apply to the Northern Cross Railroad Company, the same as if herein specially recited and granted to said last-named company, to all intents and purposes, and in every manner of thing, powers, privileges, or authority whatever.

§ 7. The last section of this act shall be so construed as in no way to affect the rights, powers, and immunities of the Alton and Sangamon Railroad Company; but shall be so construed as to confer upon, and apply to, the corporation hereby created in the construction, completion, enjoyment, security, and use of the railroad co'mpleted by this act all rights, powers, privileges, and immunities in the said act incor-
71 porating the Alton and Sangamon Railroad Company mentioned and conferred, the same as if specially herein named.

§ 8. The company hereby incorporated shall have power to procure a loan or loans of money, as shall be deemed necessary, for the construction of the said railroad, and may pledge the said road for the payment thereof. Said company may receive in payment of stock subscribed for bonds and mortgages, and also any securities or evidence of debt, stock in other companies, or other valuable things; and may dispose of or pledge the same for the purposes of said company in the construction of said railroad; but said company shall not exercise banking powers.

§ 9. This act shall be deemed and taken a public act, and be construed liberally for the benefit of said company.

§ 10. The company hereby created are authorized and empowered, under and by virtue of this act, to construct a lateral branch of this railroad contemplated by this act, commencing on the Illinois River at any convenient point opposite the town of Naples, and from thence running to and uniting with the said railroad which is to commence opposite to the town of Meredosia, and to terminate at Quincy, at the most eligible and convenient point.

Approved February 10, 1849.

EXHIBIT 10.

An act supplemental to an act entitled "An act to incorporate the Northern Cross Railroad Company," approved February 10, 1849.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That the company organized under the act to which this is a supplement is hereby authorized and empowered to locate, construct, establish, and finally complete and hereafter use, a lateral branch, commencing at any convenient point on said Northern Cross Railroad, in the county of Adams, and running thence on the most eligible, beneficial, expedient, and praticable route, through the military bounty tract, and terminating at the most convenient and eligible point at or near the southern termination of the Illinois and
72 Michigan Canal: Provided, The said company shall not locate or construct the said branch upon any line east of the town of

Knoxville, in Knox county. The said company are hereby empowered, in the construction of said branch railroad, to lay out said road wide enough for a single or double track, throughout the whole length thereof, and for the purpose of constructing the same, and for materials, stone, earth and gravel, may take and use as much more land on the sides of the same as may be necessary for the proper construction and security of said road.

§ 2. The capital stock of said company, in addition to the capital stock provided for in said original bill, shall be two millions of dollars, and may be increased to three millions of dollars, to be divided into shares of one hundred dollars each; and the directors of said company are hereby vested with power and authority to provide for opening books and obtaining subscriptions to the said additional capital stock, in such manner, and under such rules and regulations as they may prescribe for obtaining subscriptions to the capital stock provided for in said original bill.

§ 3. The provisions of the act to which this act is supplemental, relating to power, authority, and duties of the directors, and to the election and powers of the president of said company, and to the powers, rights, authorities, privileges, and immunities pertaining to the Northern Cross Railroad, granted to said company by the said original act, with the power to procure such loan or loans of money as may be deemed necessary for the construction of said branch railroad, and to pledge the said road for the payment thereof, and to receive in payment of stock subscribed for bonds and mortgages, and also any securities or evidences of debt, stock in other companies, or other valuable things, and to dispose of or pledge the same for the purposes of said company in the construction of said branch railroad, and all and singular the provisions of the said original act, and of the act therein mentioned, and beneficial to said company, shall apply to the Northern Cross Railroad Company, to all intents and purposes, and in every manner of things, powers, rights, privileges, or authority whatever, in reference to the said branch railroads, as fully and completely as if the loca-
73 tion and construction of the said branch railroad had been authorized and provided for in and by the said original bill.

§ 4. This act shall be deemed and taken to be a public act, and be construed liberally for the benefit of said company.

Approved February 1, 1851.

EXHIBIT 11.

An act supplemental to an act entitled "An act to incorporate the Northern Cross Railroad Company," approved February 10, 1849.

SECTION 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That the Northern Cross Railroad Company shall have power to borrow money, on the credit of the corporation, not exceeding its authorized capital stock, at a rate of interest not exceeding ten per cent. per annum, payable semi-annually, and may execute bonds therefor, with interest-coupons thereto annexed, and secure the payment of the same by mortgage or deed of trust on the whole or any part of the road, property, and income of the company then existing or thereafter to be acquired, and may annex to such mortgage-bonds the privilege of converting the same into the capital stock of the company at par, at the option of such holders, if such election be signified in writing to the company three years before the maturity of said bonds.

§ 2. That the directors of said company be, and they are hereby, authorized to negotiate and sell the bonds of said company at such times and at such places, either within or without this State, and at such rates and for such prices as in their opinion will best advance the interests of the company; and if such bonds are thus negotiated or sold at a discount below their par value, such sale and disposition thereof shall be as valid and binding on the company in every respect as if they were sold or disposed of at their par value.

§ 3. That the said company in securing the payment of the said bonds by a mortgage or deed of trust on the road, property, and income of the company, shall have power to execute a mortgage or deed of
74 trust aforesaid to secure the payment of the full amount of bonds, which the company may at the time said deed of trust or mortgage bears date, or at any time thereafter, desire to sell and dispose of, and may execute and sell, from time to time, such amounts of said bonds and of such dates, and payable to such person or persons as to the directors of said company may seem advisable, till the whole amount of bonds mentioned in such mortgage or deed of trust is executed and sold; and the said mortgage or deed of trust shall be as valid and effectual to secure the payment of the bonds so executed and sold, and of every part thereof, as if the same and every part thereof had been executed of even date with the said deed of trust or mortgage.

Approved June 11, 1852.

EXHIBIT 12.

An act to amend the first section of an act supplemental to "An act to incorporate the Northern Cross Railroad Company, and to increase the number of directors of said company."

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That the first section of an act entitled "An act supplemental to an act entitled 'An act to incorporate the Northern Cross Railroad Company,' approved February tenth, one thousand eight hundred and forty-nine," be so amended as to authorize the said Northern Cross Railroad Company to terminate the lateral branch of said road at any point where the said railroad may connect with any other railroad extending northward to the city of Chicago, anything in the act to which this is an amendment to the contrary notwithstanding.

§ 2. That the directors of the said Northern Cross Railroad Company may be increased, so that the number thereof shall not exceed nine.

Approved June 21, 1852.

75 EXHIBIT 13.

An act to change the name and amend the charter of the Northern Cross Railroad Company.

SECTION 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That the corporate name of said company shall be, and is hereby, changed to "The Quincy and Chicago Railroad Company," by which name and designation it shall be authorized to contract, and carry on its corporate business, and also to complete and carry out, and execute, and avail itself of all existing contracts, and the benefits thereof, and of all public and private acts of the general assembly, as if the name of said company had not been changed: Provided, that in all actions, suits, and proceedings commenced, or

judgment rendered in favor of or against the said company, the former name of the said company shall be used in prosecuting and defending the same, and in all process issued therein, until the final determination and execution thereof, in the same manner as before the passage of this act.

§ 2. That the board of directors of said company shall have power, and are hereby, authorized to declare forfeited any stock subscribed for in said road, with all the prior payments thereon, on which full payment has not been made in the manner required by the board, on first giving four weeks' notice, by publication thereof in some public newspaper, published in the city of Quincy, for four weeks in succession, once in each week, that all stock subscribed for, and not paid up in full, by a day to be named in said notice, will, at the option of the board of directors of said company, be declared forfeited.

§ 3. That the said company, and any city or incorporated town through or into which said road or branches passes, are hereby authorised and empowered, on such terms and for such consideration as the parties may agree upon, to make, execute, and perform, any contract or agreement for the establishing, opening, or abolishing any parts of any lane, avenue, or alley, within the limits of such city or town, along or across which the said road passes, or which may separate or
70 adjoin any property held by the company for the purposes of its corporate business, at such town or city; or such town or city may lease or convey the same to the said company in fee, or otherwise secure to the said company the sole occupation or use thereof, in such manner, and for such uses and purposes as may be agreed upon.

§ 4. This act shall be a public act, and take effect and be in force from and after its passage.

Approved February 10, 1857.

EXHIBIT 14.

An act to amend an act entitled "An act to amend an act entitled 'An act to incorporate the Peoria and Oquawka Railroad Company,' approved February 10, 1851."

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That the capital stock of the Peoria and Oquawka Railroad Company is hereby increased to the sum of thirty-five hundred thousand dollars, and the stockholders of said company and their successors shall have perpetual succession, by the name and style aforesaid, and shall have and enjoy all the rights and privileges heretofore or herein granted to said company by said general assembly.

§ 2. The acts of the commissioners for receiving subscription to the capital stock of said company and the subscribers to said stock, in organizing said company and in the election of directors, on the twentieth day of June, in the year of our Lord one thousand eight hundred and fifty-one, are hereby declared to be legal and valid in law, any omissions or imperfections in relation to said organization to the contrary withstanding.

§ 3. The directors of said company are hereby empowered and authorized to locate said railroad on the most direct, eligible, and feasible route from Peoria to Knoxville, without reference to Farmington: Provided, that said company shall build a branch of said railroad to Farmington, and shall establish a depot there.

§ 4. The said directors are also empowered and authorized to locate

the branch of said railroad provided for in the fourth section of the
77 act to which this is an amendment according to the survey already made thereof, and to fix the termination of said branch on the Mississippi River, at a point opposite to or above or below the city of Burlington, in the State of Iowa, which termination shall be within two miles of said point, opposite the said city of Burlington, Iowa.

§ 5. The said company shall have the right of way upon and may appropriate to its sole use and control, for the purposes and uses of the said railroad company, any land belonging to the State of Illinois, not exceeding two hundred feet in width, wherever any such land may be situated along such railroad, for its entire length, as well as along its branches, and may enter upon and take possession of and use all and singular any lands, streams, and materials of every kind belonging to said State, for the location of depots and stopping stages, for the purpose of constructing bridges, dams, embankments, excavations, station-grounds, spoil-banks, turnouts, engine-houses, shops, and other buildings necessary for the construction, completing, altering, maintaining, preserving, and complete operation of said road; and all such lands, waters, materials, and privileges are hereby forever guaranteed to said company for said purposes.

§ 6. Said company are hereby authorized and empowered to make and establish a ferry across the Mississippi River, at the termination of the branch west of Monmouth, to such point on the Iowa shore of said river as the said company may be authorized or required to land at. Said company are also authorized and empowered to make and establish a ferry across the Illinois River, from any ground owned by them in the city of Peoria, to the opposite shore of said Illinois River, in Tazewell County. They are hereby authorized to make and use all necessary boats and apparatus, of all and every description whatsoever, advantageous and necessary for the use of said company, at either or both of said ferries, and propel the same by horse, steam, or any mode or power that to said company may seem best: Provided, that said company shall not use said ferries, or allow the same to be used, for any other purpose than those connected with or arising out of the business of said railroad.

§ 7. Said company shall have authority and power to improve
78 all or either of their landings at either or both of said ferries, by building a pier or piers, or making embankments into either or both of said rivers: Provided, that any such improvement does not interfere with the free navigation of either of said rivers.

§ 8. If any person shall willfully or negligently do or cause to be done, any injury to said ferries, or to any boat or appurtenance thereto belonging, the person or persons so offending shall forfeit and pay to said company three times the amount of such injury, to be recovered by action of debt or action on the cause before any justice of the peace or other court having jurisdiction of the same. The said ferries shall be deemed public highways within the meaning of the laws providing for the punishment of persons injuring, obstructing, or destroying public highways or bridges, in any manner or by any means whatever.

§ 9. The said company are hereby authorized to continue said railroad from Peoria, on the most eligible route eastward, to a point on the Indiana State line, which shall be not more than twenty miles either north or south of a due east and west line that would run through Lafayette, Indiana. And the same powers and privileges for construction and maintaining this extension, and for connecting the same with other

roads, as is contained in the original charter, is hereby conferred upon said company in relation to this extension.

§ 10. That the Peoria and Jquawka Railroad Company shall have power to borrow money, on the credit of the company, not exceeding its authorized capital stock, at a rate of interest not exceeding ten per cent. per annum, payable semi-annually, and may execute bonds therefor with interest-coupons thereto annexed, and secure the payment of the same by mortgage or deed of trust on the whole or any part of the road, property, and income of the company then existing or thereafter to be acquired, and may annex to such mortgage-bonds the privilege of converting the same into the capital stock of the company at par, at the option of the holders, if such election be signified in writing to the company three years before the maturity of said bonds.

§ 11. That the directors of said company be, and they are hereby, authorized to negotiate and sell the bonds of said company at such
79 times and such places, either within or without this State, and at such rates and for such prices as in their opinion will best advance the interests of the company; and if such bonds are thus negotiated or sold at a discount below their par value, such sale and disposition thereof shall be as valid and binding on the company in every respect, as if they were sold or disposed of at their par value.

§ 12. That the said company, in securing the payment of the said bonds by a mortgage or deed of trust on the road, property, and income of the company, shall have power to execute a mortgage or deed of trust aforesaid, to secure the payment of the full amount of bonds which the company may at the time said deed of trust or mortgage bears date, or at any time thereafter, desire to sell and dispose of, and may execute and sell, from time to time, such amounts of said bonds, and of such dates, and payable to such person or persons, as to the directors of said company may seem advisable, till the whole amount of bonds mentioned in such mortgage or deed of trust is executed and sold; and the said mortgage or deed of trust shall be as valid and effectual to secure the payment of the bonds so executed and sold, and of every part thereof, as if the same and every part thereof had been executed of even date with the said deed of trust or mortgage.

§ 13. This act to be in force from and after its passage.

Approved June 22, 1852.

EXHIBIT B.

CHICAGO, *August* 18, 1874.

Hon. C. E. LIPPINCOTT,
Ch. State Board of Equalization:

DEAR SIR: In reporting to the railroad and warehouse commissioners, we are required to state amount of capital and bonded debt owned or held by lease in perpetuity, and to apportion the same pro rata to the mile of main track in each State where the road is located.

In complying with this requirement, we find our report made to you recently of the property of the Chicago, Burlington & Quincy Railroad Company will be more easily comprehended by explanations following:

80 As reported to you in Schedule No. 2, we operate in Illinois and Iowa $1,263\frac{383}{5280}$ miles of road, over which the rolling-stock should be distributed pro rata per mile of main track. There are, however, $27\frac{06}{100}$ miles over which the trains pass in Iowa under a lease, but for the cost of which no part of our bonded debt or capital stock have been created.

Of the remainder of the road, $777\frac{348}{5280}$ miles are located in Illinois, and the balance in Iowa. For convenience of calculation, I call the road in Illinois 777½ miles, and the road in Iowa 459 miles. Calculations made upon this basis make the amount of capital stock chargeable to road in Illinois $16,723,709.20, instead of $18,652,910, as stated in Schedule No. 4, and the bonded debt $16,721,044.53, instead of $16,704,669.18, as stated in same schedule No. 4.

All of which is respectfully submitted for such action as you may deem wise.

Yours, respectfully,

A. T. HALL, *Treas.*

EXHIBIT C.

CHICAGO, *Sept. 7th*, 1874.

To the auditor of public accounts, State of Illinois, and chairman of board of equalization:

In the return made to your office for the year 1874, required by section 48 of the act relating to the assessment and levy of taxes, the bonded indebtedness of this company was stated as follows:

Total indebtedness, including current expenses for operating the road	$17,805,198 02
Deduct indebtedness for current expenses in operating the road	1,100,528 84
Total balance	16,704,669 18

This statement, for the purpose of taxation of capital stock, and in truth and in fact, is erroneous, and contains $5,540,500 of indebtedness of other companies, for the payment of which this company is under no contract obligation, and the roads of which are merely operated
81 by this company. This amount should be deducted from the amount above stated, which leaves $11,164,169.18 as the total and actual bonded indebtedness of this company, and the entire and only bonded indebtedness which this company is bound to pay.

This $5,540,500 of bonded indebtedness of other companies was created by the several respective companies under which those roads were constructed, and before this company came into possession of them. The stock in all which, whatever there was, has not now nor has it had for years any market, real or intrinsic, value, and is utterly worthless. The roads themselves are operated under the charter and franchises of the Chicago, Burlington & Quincy Railroad Company, and all the tangible property of these roads, or connected therewith, is listed, assessed, and taxed against and as the property of this company, as should be done under the terms of the lease under which they are held.

We make this communication now, for the purpose of calling the attention of the railroad committee on capital stock and the board of equalization to the fact.

These items were included in the assessment of capital stock last year by oversight, and vitiated the tax levied to that extent, and for this reason, among others, it was and is enjoined by the courts.

If this item be again included in the assessment for the present year, it will, in like manner, render the tax illegal and subject again to be enjoined, and we accordingly make this protest against this item being included, so that injustice may not be inadvertently done in this regard, to this company, by the board of equalization, and beg that this may

be taken as evidence of the facts herein stated, and that it may go upon the records of your board.

(Signed)
THE CHICAGO, BURLINGTON & QUINCY R. R. COMPANY,
By J. M. WALKER, *Pres.*

STATE OF ILLINOIS,
Cook County, ss:

J. M. Walker, president, and A. T. Hall, secretary of the Chicago, Burlington and Quincy Railroad Company, being duly sworn,
82 depose and say, each for himself, that they are the above entitled officers of said railroad company, and that the foregoing statements are true, to the best of our knowledge and belief.

(Signed) J. M. WALKER.
A. T. HALL.

Subscribed and sworn to before me, this 8th day of September, A. D. 1874.

[NOTARIAL SEAL.] (Signed) LESTER O. GODDARD,
Notary Public.

EXHIBIT D.

BOSTON, *November* 23, 1874.

J. M. WALKER,
President of Chicago, Burlington & Quincy R. R. Co.:

I am a stockholder in the Chicago, Burlington & Quincy Railroad Company, and have learned with surprise the recent action of the board of equalization of the State of Illinois, subjecting the company and its property to assessment and taxation, to an extent and in a manner wholly inequitable, unjust, and I think clearly illegal. I request the company to take promptly all necessary steps to resist said taxation, and to enjoin all proceedings to collect the same, and take all other necessary steps to defeat the same and protect my interest.

Yours truly,
HENRY P. KIDDER.

On motion of Mr. Bartlett, seconded by Mr. Joy, voted that this board confidently believes that the taxation by the State of Illinois, referred to in the letter of Mr. Kidder, submitted to this board by the president, is illegal, as well as unjust, and that said taxation is not binding on this company; but, under the circumstances of this corporation, the board must and do decline to resist the same.

On motion, voted to adjourn.

Attest:
J. N. DENISON, *Clerk.*

BOSTON, *November* 25, 1874.

83 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

STATE OF ILLINOIS,
Cook County, ss:

Wirt Dexter, being duly sworn, says that he is the agent and attorney of Henry P. Kidder and Daniel P. Stone, the complainants in the foregoing bill of complaint, and as such agent and attorney has

made investigation relative to the facts therein stated, and is better acquainted with the details of the same than the said complainants; that he is authorized by said complainants to cause the foregoing bill to be filed; that he has read the said bill and knows the contents thereof, and the same is true of his own knowledge, except those matters stated on information and belief, and those he believes to be true.

WIRT DEXTER.

Subscribed and sworn to before me January 8, 1875.

E. A. DRUMMOND,
U. S. Com'r.

(Endorsed:) Filed Jan'y 8, 1875. W. W. Bradley, clk.

84 And thereupon the following subpœna issued upon said bill, which, together with the marshal's return thereon endorsed, reads in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To the Chicago, Burlington and Quincy Railroad Company; Herman Lieb, clerk of the county of Cook; J. J. Cole, clerk of the county of Du Page; Jeremiah Evarts, clerk of the county of Kendall; C. M. Conrad, clerk of the county of De Kalb; James A. Hawley, clerk of the county of Lee; Hubert A. McCaleb, clerk of the county of La Salle; Melvin J. Keith, clerk of the county of Bureau; F. G. Wilton, clerk of the county of Henry; William H. Sexton, clerk of the county of Warren; David C. Hanna, clerk of the county of Henderson; D. J. Walker, clerk of the county of Stark; John D. McClure, clerk of the county of Peoria; C. F. Durston, clerk of the county of Mercer; Edward W. Payne, clerk of the county of Whit'side; John C. Sherwin, clerk of the county of Kane; John S. Winter, clerk of the county of Knox; J. C. Warley, clerk of the county of Fulton; Allen L. Sparks, clerk of the county of McDonough; George J. Rogers, clerk of the county of Hancock; Willis Hazlewood, clerk of the county of Adams; John C. Scripps, clerk of the county of Schuyler; H. B. Miller,
85 collector of the county of Cook; Lewis C. Stover, collector of the county of Du Page; Henry C. Paddock, collector of the county of Kane; T. S. Serrine, collector of the county of Kendall; Robert Hampton, collector of the county of De Kalb; Josiah Little, collector of the county of Lee; Samuel W. Raymond, collector of the county of La Salle; Samuel Edwards, collector of the county of Bureau; P. P. Beveridge, collector of the county of Henry; Edward T. Ellett, collector of the county of Knox; David D. Varney, collector of the county of Warren; George Bell, sheriff & ex officio collector of the county of Henderson; Orlando Brown, collector of the county of Stark; Isaac Taylor, collector of the county of Peoria; William N. Graham, collector of the county of Mercer; W. H. Thatcher, collector of the county of Whiteside; Job Walker, collector of the county of Fulton; Anthony Thornton, collector of the county of McDonough; Peter Frey, collector of the county of Hancock; Edwin Cleveland, collector of the county of Adams; and Edward D. Wells, collector of the county of Schuyler, greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Mon-

86 day in the month of February next, to answer the bill of complaint of Henry P. Kidder and David P. Stone this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this eighth day of January, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the 99th.

[L. S.] W. H. BRADLEY, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that, unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainants' bill will be taken against them as confessed, and a decree entered accordingly.

W. H. BRADLEY, *Clerk.*

This is a duplicate of the subpœna issued to the marshal of the northern district of Illinois.

W. H. BRADLEY, *Clk.*

87 *Marshal's return.*

Executed this writ on this 20th day of January, A. D. 1875, by leaving true copies of the same at the last usual places of abode, in the district, o the within-named Peter Frey, collector of the county of Hancock, and George J. Rogers, clerk of the county of Hancock, in the hands of a member of their respective families above the age of ten years, and to whom the contents of this writ were made known; also, on the 21st day of January, A. D. 1875, by delivering true copies of the same to the named Anthony Thornton, collector of the county of McDonough; Allen L. Sparks, clerk of the county of McDonough; Willis Hazelwood, clerk of the county of Adams; Edwin Cleveland, collector of the county of Adams; Job Walker, collector of the county of Fulton; J. C. Warley, clerk of the county of Fulton; also on the 22d day of January, A. D. 1875, by leaving a true copy of the same at the last usual place of abode, in this district, of the within-named John C. Scripps, clerk of the county of Schuyler, in the hands of a member of his family above the age of ten years, and to whom the contents of this writ were made known, and by delivering a true copy of the same to the within-named Edward D. Wells, collector of the county of Schuyler.

E. R. ROE,
U. S. Marshal,
By C. W. PHILLIPS,
Deputy, Southern District of Illinois.

88 (Endorsed:) Filed April 10th, 1875. W. W. Bradley, clerk.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the Chicago, Burlington and Quincy Railroad Company; Herman Lieb, clerk of the county of Cook; J.

J. Cole, clerk of the county of Du Page; Jeremiah Evarts, clerk of the county of Kendall; C. M. Conrad, clerk of the county of De Kalb; James A. Hawley, clerk of the county of Lee; Hubert A. McCaleb, clerk of the county of La Salle; Melvin J. Keith, clerk of the county of Bureau; F. G. Wilton, clerk of the county of Henry; William H. Sexton, clerk of the county of Warren; David C. Hanna, clerk of the county of Henderson; D. J. Walker, clerk of the county of Stark; John D. McClure, clerk of the county of Peoria; C. F. Durston, clerk of the county of Mercer; Edward W. Payne, clerk of the county of Whiteside; John C. Sherwin, clerk of the county of Kane; John S. Winter, clerk of the county of Knox; J. C. Warley, clerk of the county of Fulton; Allen L. Sparks, clerk of the county of McDonough; George J. Rogers, clerk of the county of Hancock; Willis Hazelwood, clerk of the county of Adams; John C. Scripps, clerk of the
89 county of Schuyler; H. B. Miller, collector of the *of the* county of Cook; Lewis C. Stover, collector of the county of Du Page; Henry C. Paddock, collector of the county of Kane; T. S. Serrine, collector of the county of Kendall; Robert Hampton, collector of the county of De Kalb; Josiah Little, collector of the county of Lee; Samuel W. Raymond, collector of the county of La Salle; Samuel Edwards, collector of the county of Bureau; P. P. Beveridge, collector of the county of Henry; Edwin T. Ellett, collector of the county of Knox; David D. Varry, collector of the county of Warren; George Bell, sheriff and ex-officio collector of the county of Henderson; Orlando Brown, collector of the county of Stark; Isaac Taylor, collector of the county of Peoria; William N. Graham, collector of the county of Mercer; W. H. Thatcher, collector of the county of Whiteside; Job Walker, collector of the county of Fulton; Anthony Thornton, collector of the county of McDonough; Peter Frey, collector of the county of Hancock; Edwin Cleveland, collector of the county of Adams; and Edward D. Wells, collector of the county of Schuyler, greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the
90 first Monday in the month of February next, to answer the bill of complaint of Henry P. Kidder and Daniel P. Stone, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default. To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this eighth day of January, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the 99th.

[L. S.] W. H. BRADLEY, *Clerk.*

MEMORANDA.—The above-named defendants are notified that, unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

W. H. BRADLEY, *Clerk.*

Marshal's return.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Know all men by these presents that I have appointed, and by these presents do appoint, E. L. Waterman my true and lawful deputy to execute the annexed writ, H. P. Kidder et al. vs. The C., B. & Q. R. R. et al., and to make return of the execution thereof according to law.

B. H. CAMPBELL, [SEAL.]
91 *United States Marshal for the Northern District of Illinois.*

I have served the annexed writ in the following manner, to wit: Henry C. Paddock, collector of the county of Kane, and T. S. Serene, collector of the county of Kendall, on the 21*d* day of Jan., 1875; upon Samuel W. Raymond, collector of the county of La Salle; upon Jeremiah Evarts, clerk of the county of Kendall, and Hubert A. McCaleb, clerk of the county of La Salle, on the 22d day of January, A. D. 1875, by delivering to each of them, personally, a true copy thereof on the aforesaid days.

B. H. CAMPBELL,
United States Marshal,
By E. L. WATERMAN,
Special Deputy.

E. L. Waterman, being duly sworn, *and* says that he served the annexed writ as stated in the foregoing return, and that the expense, returned by him in addition to the fees, was actually incurred, and that the same is according to law.

[SEAL.] PHILIP A. HOYNE,
United States Commissioner for the Northern District of Illinois.

Sworn to before me this 30th day of Jan'y, A. D. 1875.

I served the annexed writ or order in the following manner and
92 time, to wit: Upon Herman Lieb, clerk of the county of Cook, and H. B. Miller, collector of said co., therein named, on the 23d day of January, A. D. 1875; upon J. J. Cole, clerk of the county of Du Page; upon C. M. Conrad, clerk of the county of De Kalb; upon Lewis C. Stover, collector of the county of Du Page, & upon Robert Hampton, collector of the co. of De Kalb, on the 22d day of January, A. D. 1875; upon Josiah Little, collector of the county of Lee; upon W. H. Hatcher, collector of the co. of Whiteside; upon James A. Hawley, clerk of the co. of Lee, and upon Edward W. Payne, clerk of the county of Whiteside, on the 21st day of January, A. D. 1875; upon Edwin T. Ellett, collector of the co. of Knox; upon Samuel Edwards, collector of the co. of Bureau, & upon Melvin J. Keith, clerk of the co. of Bureau, on the 20th day of January, A. D. 1875; upon D. C. Hanna, clerk of the co. of Henderson; upon C. F. Durston, clerk of the co. of Mercer; upon William N. Graham, collector of the co. of Mercer, & upon George Bell, sheriff & ex-officio collector of the co. of Henderson, on the 19th day of January, A. D. 1875; upon John S. Winter, clerk of the co. of Knox; upon William H. Sexton, clerk of the co. of Warren, & upon David C. Parry, collector of the co. of Warren, on the 18th day of January, A. D. 1875; and upon John C. Sherwin, clerk of the co. of Kane, on the 16th day of Jan., A. D. 1875, by delivering to each of them, personally, a true copy thereof on the aforesaid day.

B. H. CAMPBELL, *U. S. Marshal,*
By L. O. GILMAN, *Deputy.*

93 UNITED STATES OF AMERICA,
Northern district of Illinois ss :

Know all men by these presents that I have appointed, and by these presents do appoint, Samuel L. Gill my true and lawful deputy, to execute the annexed writ, Henry P. Kidder et al. v. Chicago, Burlington & Quincy R. R. Co. et al., and to make return of the execution thereof according to law.

B. H. CAMPBELL, [SEAL.]
United States Marshal for the Northern District of Illinois.

I have served the annexed writ in the following manner, to wit: by delivering a true & correct copy thereof to John D. McClure, co. clerk, therein named, on the 23d day of January, 1875; to Isaac Taylor, co. collector, therein named, on the 23d day of January, A. D. 1875; to D. J. Walker, clerk of the co. of Stark, therein named, on the 23d day of January, A. D. 1875; to Orlando Brace, collector of the co. of Stark, therein named, on the 23d day of January, A. D. 1875; to P. T. Beveridge, therein named, on the 23d day of Jan'y, A. D. 1875; and not being able to find F. G. Welton in my district, I served the annexed writ on him by leaving a true & correct copy thereof at his usual place of abode, with Ella M. Wilton, a member of his family, ten years of age & upwards, & explained to her the contents therein, Jan. 23, 1875.

B. H. CAMPBELL,
94 *United States Marshal,*
By S. L. GILL,
Special Deputy.

Samuel L. Gill, being duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return, and that the expense returned by him, in addition to the fees, was actually incurred, and that the same is according to law.

Sworn to before me this 29th day of January, A. D. 1875.

JOHN D. McCLURE,
Clerk Co. Court, Peoria Co.

(Endorsed:) Filed April 10, A. D. 1875. W. H. Bradley, clk.

And afterwards, to wit, on the 8th day of January, A. D. 1875, in the record of the proceedings of said court in said cause, is the following entry, to wit:

HENRY P. KIDDER AND DANIEL P. STONE,
v.
THE CHICAGO, BURLINGTON & QUINCY RAILroad Company, Herman Lieb, clerk, &c. et al. } In chancery.

Now come the complainants, by their solicitors, and file their bill of complaint against the defendants, and move the court for an injunction as therein prayed for.

And it appearing to the court that the complainants will suffer
95 irreparable damage unless said injunction is granted, it is thereupon ordered that Herman Lieb, clerk of the county of Cook; J. J. Cole, clerk of the county of Du Page; Jeremiah Everts, clerk of the county of Kendall; C. M. Conrad, clerk of the county of De Kalb; James A. Hawley, clerk of the county of Lee; Herbert A. McCaleb, clerk of the county of La Salle; Melvin J. Keith, clerk of the county of Bureau; F. G. Wilton, clerk of the county of Henry; William H. Sexton, clerk of the

county of Warren; David C. Hanna, clerk of the county of Henderson; J. C. Warley, clerk of the county of Fulton; Allen L. Sparks, clerk of the county of McDonough; George J. Rogers, clerk of the county of Hancock; Willis Hazelwood, clerk of the county of Adams; D. J. Walker, clerk of the county of Stark; John C. Scripps, clerk of the county of Schuyler; C. F. Durston, clerk of the county of Mercer; Edward W. Payne, clerk of the county of Whiteside; John C. Sherwin, clerk of the county of Kane; John S. Winter, clerk of the county of Knox, be, and they are hereby, enjoined and restrained from extending any taxes for the year eighteen hundred and seventy-four against the defendant The Chicago, Burlington & Quincy Railroad Company, as mentioned in said bill. And that H. B. Miller, collector of the county of Cook; Lewis C. Stover, collector of the county of Du Page; Henry C. Paddock, collector of the
96 county of Kane; T. S. Serrine, collector of the county of Kendall; Robert Hampton, collector of the county of De Kalb; Josiah Little, collector of the county of Lee; Samuel W. Raymond, collector of the county of La Salle; Samuel Edwards, collector of the county of Bureau; P. P. Beveridge, collector of the county of Henry; Edwin T. Ellett, collector of the county of Knox; David D. Varry, collector of the county of Warren; George Bell, sheriff and ex-officio collector of the county of Henderson; Job Walker, collector of the county of Fulton; Anthony Thornton, collector of the county of McDonough; Peter Frey, collector of the county of Hancock; Edwin Cleveland, collector of the county of Adams; Orlando Brown, collector of the county of Stark; Isaac Taylor, collector of the county of Peoria; Edward D. Wells, collector of the county of Schuyler; William N. Graham, collector of the county of Mercer; and W. H. Thatcher, collector of the county of Whiteside, be, and they are hereby, enjoined and restrained from collecting any taxes against the said defendant The Chicago, Burlington and Quincy Railroad Company, as mentioned in said bill of complaint, for the year eighteen hundred and seventy-four, or in any manner enforcing the collection of said taxes until the further order of the court.

97 And it is further ordered that the hearing of the motion for the injunction prayed for in said bill be set for the twenty-sixth day of January instant.

And afterwards, to wit, on the 26th day of January, A. D. 1875, in the record of the proceedings of said court, is the following entry, to wit:

HENRY P. KIDDER AND DANIEL P STONE
v.
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD Company, Herman Lieb, and others. } In chancery.

This cause came on for hearing upon the application of the plaintiffs for an injunction against the several defendants, as prayed for in the bill, of which application defendants have had due notice, and the plaintiffs appeared, by their counsel, Wirt Dexter and O. H. Browning, and the defendants H. B. Miller and Herman Lieb, by John M. Rountree, their attorney, the other defendants not appearing; and upon consideration it is ordered and decreed that the following defendants, who are collectors of revenue for the said counties, in the State of Illinois, as stated in the bill, viz, H. B. Miller, Lewis C. Stover, Henry C. Paddock, T. S. Serrine, Robert Hampton, Josiah Little, Samuel W. Raymond, Samuel Edwards,
98 P. P. Beveridge, Edwin T. Ellett, David D. Varry, George Bell, Job Walker, Anthony Thornton, Peter Frey, Edwin Cleveland, Orlando Brown, Isaac Taylor, Edward D. Wells, William N.

Graham, and W. H. Thatcher, be, and are hereby, restrained and enjoined from collecting the tax levied on the capital stock of the Chicago, Burlington and Quincy Railroad Company for the year eighteen hundred and seventy-four, and from proceeding in any wise to attempt the collection of said capital-stock tax, and this injunction shall extend to the agents, attorneys, and servants of said several defendants; and that a writ of injunction in accordance with this order issue to said several defendants, their agents, attorneys, and servants, on complainants' filing bond in the penal sum of one hundred & fifty thousand dollars, conditioned for the payment of said taxes and all damages the defendants or each of them may sustain by reason of the wrongful issue of said injunction. Bond to be approved by the court.

Injunction bond.

Know all men by these presents, that whereas Henry P. Kidder and Daniel Stone, of Boston, Massachusetts, have filed their bill in equity in the circuit court of the United States for the district of Northern
99 Illinois against the several county collectors, defts., viz., H. B. Miller, L. C. Stover, H. C. Paddock, T. S. Serrine, Robert Hampton, J. Little, S. W. Raymond, Isaac Taylor, Edward D. Wells, William N. Graham, W. H. Thatcher, S. Edwards, P. P. Beveridge, E. T. Ellet, D. D. Varry, George Bell, Job Walker, A. Thornton, P. Frey, E. Cleveland, and O. Brown, praying for an injunction against the collection of the capital-stock tax levied against the Chicago, Burlington & Quincy Railroad Company for the year 1874, which injunction the said court has granted upon the giving of bond as required in its said order:

Now, the undersigned, jointly and severally, acknowledge themselves indebted to the said defendants, and *and* to them severally as their several interests as collectors of revenue shall appear, in the penal sum of one hundred and fifty thousand dollars, upon the following condition, that is to say, if the said injunction shall be dissolved and payment of such tax adjudged, and thereupon the said Chicago, Burlington & Quincy Railroad Company, or the said complainants, Henry P. Kidder and Daniel P. Stine, shall pay, or cause to be paid, the said tax so enjoined, and all damages the said defendants, and each of them, may suffer by reason of the wrongful issue of such injunction, then
100 this obligation shall be void, but otherwise of full force and effect.

Witness our hands and seals this 30th day of January, A. D. 1875.

A. T. HALL. [SEAL.]
J. M. WALKER. [SEAL.]
WIRT DEXTER. [SEAL.]

Approved.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed Jan'y 30th, 1875. W. H. Bradley, clerk.

101 The joint and several answers of the defendants, Herman Lieb and others, filed July 30, 1875.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:
In the circuit court of the United States for the northern district of Illinois, of the term, A. D. 1875.

HENRY P. KIDDER AND DANIEL P. STONE
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD. } In chancery.

The joint and several answers of Herman Lieb, clerk, and H. B. Miller, collector, of Cook County; J. J. Cole, clerk, and Lewis C. Stover, collector, of Du Page " ; John C. Sherwin, clerk, and H. C. Paddock, collector of Kane County; J. Evarts, clerk, and T. S. Serrine, collector, of Kendall County; C. M. Conrad, clerk, and Robert Hampton, collector of De Kalb " ; J. A. Hawley, clerk, and Josiah Little, collector, of Lee County; H. A. McCaleb, clerk, and S. W. Raymond, collector, " La Salle " ; M. J. Keith, clerk, and Samuel Edwards, collector, " Bureau " ; F. G. Wilton, clerk, and P. H. Beveridge, collector, of Henry County; J. S. Winter, clerk, and E. T. Ellet, collector, of Knox County; W. H. Sexton, clerk, and D. D. Parry, collector, of Warren County; D. C. Hanna, clerk, and George Bell, collector, of Henderson " ; J. C. Worley, clerk, and Job Walker, collector, of Fulton
102 County; A. L. Sparks, clerk, and Anthony Thornton, collector, of McDonough ; G. J. Rogers, clerk, and Peter Frey, collector, of Hancock County; W. Hazelwood, clerk, and Edwin Cleveland, collector, of Adams " ; D. J. Walker, clerk, and Orlando Brace, collector, " Stark " ; John McClure, clerk, and Isaac Taylor, collector, of Peoria County; J. C. Scripps, clerk, and E. D. Wells, collector, " Schuyler " ; C. F. Durstan, clerk, and W. H. Graham, collector, of Mercer County; E. W. Payne, clerk, W. H. Thatcher, collector, of Whiteside " , defendants, impleaded with the Chicago, Burlington and Quincy Railroad Company to the bill of complaint of Henry P. Kidder and Daniel P. Stone.

These defendants, saving and reserving to themselves all right of exception to the manifold errors, uncertainties, and insufficiencies in the complainants' bill of complaint contained, for answer thereto, or to such parts thereof as these defendants are advised it is necessary or material they should answer, say:

That they admit the organization of the Chicago, Burlington and Quincy Railroad Company in the manner and under the charters and laws in the bill set forth, and that the said several companies mentioned in said bill built and constructed their said several roads under the charters granted to them, as stated in said bill, and that said several railroad companies and said roads were afterwards consolidated into one company and one road under the name and description of the Chicago, Burlington and Quincy Railroad Company, as stated in said bill.

103 As to those averments in the bill wherein the complainants state that, on the first day of May, A. D. 1874, the aggregate amount of certificates of stocks which had been sold by said corporation amounted to the sum of sixteen millions seven hundred and twenty-nine thousand seven hundred and nine and $\frac{20}{100}$, ($16,729,709.20,) and that the total indebtedness which said corporation had incurred, and for which it had issued its bonds on the first day of May, A. D. 1874, amounted to the sum of eleven millions one hundred and sixty-four thousand one hundred and sixty-nine and $\frac{18}{100}$ dollars, ($11,164,169.18,) these defendants say that they have no knowledge, except from the averments in said bill

and the returns made by the president and secretary of said company, under their respective oaths, to the auditor of public accounts of Illinois, and which returns were dated and sworn to on August 10th, A. D. 1874, and filed in the office of the auditor of public accounts of Illinois on August 11th, A. D. 1874, a certified copy of which is hereto annexed as an exhibit, and for the purpose of evidence in this case; that it appears from said returns, so made under oath as aforesaid, that on the first day of May, A. D. 1874, the total amount of capital stock subscribed and paid up, including road in Illinois and Iowa, owned and leased in perpetuity, was twenty-six millions four hundred and thirty-one thousand sixty-two and $\frac{76}{100}$ dollars, ($26,431,062.76.)

104 That the proportion paid up in Illinois was eighteen millions six hundred and fifty-two thousands nine hundred and ten dollars, ($18,652,910.00,) leaving the proportion of such capital stock on roads leased in Iowa seven millions seven hundred and seventy-three thousands one hundred fifty-two and $\frac{76}{100}$ dollars, ($7,773,152.76.)

That such stock was divided into shares of one hundred dollars each, and that the market value of the shares of stock, for the portion of the road in Illinois, were quoted at from $100.00 to $102.00 per share, and at $97.00 and $99.00 for the road in Iowa, and that the actual value of such shares was at par, that is, at one hundred dollars per share.

It also appears from said returns, so made as aforesaid, that on the first day of May, A. D. 1874, the bonded indebtedness of said company, after deducting the current expenses, was sixteen millions seven hundred and four thousand six hundred and sixty-nine and $\frac{18}{100}$ dollars, ($16,704,669.18.)

These defendants therefore deny the allegations of said bill respecting such capital stock and bonded debt of said company, so far as the same conflict with the said returns of said company so made as aforesaid. But these defendants admit that the entire proceeds of the sales of the said capital stock and bonds of the said Chicago, Burlington and

105 Quincy Railroad Company have been expended in the construction, enlargement, and improvement of its said railroad and increasing its facilities for business, as stated in the bill.

Defendants admit that prior to said 1st day of May, A. D. 1874, the said Chicago, Burlington and Quincy Railroad Company became the lessee of each of the several other roads in said bill mentioned, and had the right to operate the same in connection with its own road, and did so operate the same, and exercise thier respective franchises accordingly.

Defendants admit the filing and making returns of the assessment and equilization of taxes against said company, as alleged in said bill, but deny all charges in said bill respecting double assessments.

Defendants deny that, in the assessment of the "railroad-track" or right of way of said company, the said State board of equilization took into consideration the improvements thereon beneath the ties or iron or superstructure, consisting of the grading of the track, the bridges and culverts, and the preparation of the track to receive the ties and iron or superstructure thereon; but these defendants aver that, as appears from the proceedings of said State board in that behalf, the said board

106 excluded the consideration of such improvements upon the railroad-track from thier assessment under that head or designation, supposing that the increase of value of the property arising from such improvements could more fairly and justly be determined in the assessment under the designation of capital stock. Said defendants do, however, admit that, with the exceptions aforesaid, all the tangible

property of the said Chicago, Burlington and Quincy Railroad Company in the State of Illinois was assessed against said company by the State board of equilization, except the real estate, other than "railroad track," and the tangible personal property, other than "rolling-stock," which was assessed by the local town and county assessors of the counties respectively in which said property was situated, and such property so assessed by said local assessors was equilized for taxation against said company, and that the equilized value of said property so assessed by local assessors, when added to the assessed value of said "railroad-track" and "rolling-stock," as assessed by the State board of equilization under those designations, amounted to the sum of seven millions eight hundred seventy-three thousand eight hundred and ninety-seven dollars, ($7,873,897.00;) and that after all the tangible property of said company had been so assessed, with the exception afore-
107 said, and that which was so assessed by the said local assessors equilized for taxation against said company as aforesaid, amounting in the aggregate to the sum of seven millions eight hundred seventy-three thousand eight hundred and ninety-seven dollars, ($7,873,897.00,) the said State board of equilization assessed the said company in the further sum of twelve millions one hundred and twenty-three thousand six hundred and sixty-eight dollars, ($12,123,668.00,) as and for its capital stock, including its franchise, which said assessment was made by said State board of equilization under the name and description of an assessment of capital stock; and that there was no separate assessment of the franchises of said company; and said defendants also admit that the said Chicago, Burlington and Quincy Railroad Company, by its attorney, appeared before the said State board of equilization, when it was in session and making assessments against railroad companies and other corporations, and stated to said State board that all the property which said company owned, subject to taxation, was its railroad and appurtenances and equipments, which had already been assessed to said company for taxation, and protested against any other assessment against it under the name of "capital-stock" assessment, or under any other name or device whatever.

108 Defendants admit that said State board of equilization adopted and acted upon the rules set forth in said preamble and resolution set out in said bill, in the assessment of the so-called capital stock and franchises of said company, and aver that the said State board only took into consideration the market value of the bonded debt of said Chicago, Burlington and Quincy Railroad Company reported by it as aforesaid, and the market value of the shares of stock in said company, as the same was valued in the hands of the shareholders, as one of the means to ascertain the total value of the entire property or capital of said company, including *including* its franchises, and not for the purpose of assessing such bonds as representing such bonded debt against the persons who may own the same.

Defendants admit that the total assessed valuation of the tangible property not assessed under the head of capital stock was seven millions eight hundred and seventy-three thousand eight hundred and ninety-seven dollars, ($7,873,897.00,) and that the total valuation of the capital or property of said company, (including its franchise,) assessed under the head of capital stock, was the sum of $12,163,668.00, which makes
109 the aggregate value of all the property and franchises of said company so assessed against said company amount to the sum of $19,997,565.00. Defendants aver, upon information and belief, that the value of the property and franchises of said company on the 1st of

May, A. D. 1874, and subject to taxation, in fact greatly exceeded said sum of $19,997,565.00.

Defendants admit the distribution of said assessment among the various counties, towns, *ect.*, as alleged in said bill, and admit that the auditor of public accounts issued to the several county clerks his certificate as alleged in said bill, and that said clerks have extended such taxes upon the assessed and equilized value of such property in pursuance of law.

These defendants deny that said State board of equilization wilfully or intentionally disregarded the laws of Illinois and the rules adopted by such board, and made said assessment with the purpose and design of compelling said Chicago, Burlington and Quincy Railroad Company to pay an amount of tax in any manner out of proportion to the value of its property, and in excess to the proportional taxation of other railroad corporations in said State, as alleged in said bill, and deny all and singular the allegations of said bill that said State board intentionally omitted to assess the capital stock and franchises of any
110 railroad company in said State in any case where said board found that the aggregate value of such capital stock and franchises exceeded the assessed value of tangible property of such company. But defendants admit that as to the several railroad companies in said bill named, as to which it is alleged that no capital-stock tax was assessed, no assessment was in fact made against them under the designation of "capital stock," for the reason, as appears from the proceedings of said State board, (page 80,) that the total ascertained value of capital stock, including franchise, did not exceed the assessed value of the tangible property of said companies respectively.

It is admitted that the complainants in said bill are citizens and residents of the State of Massachusetts, and the owners of bonds and stocks, respectively, as alleged in said bill.

That the statement in said bill in regard to the number of miles operated in the State of Illinois, both by defendant railroads' company and other companies, and the amount of capital-stock assessment against them, are true as alleged in said bill.

Defendants further admit that the Illinois State board of
111 equilization for the year 1874, at its session for the assessment of taxes against corporations, had before it the original report hereto annexed, and the supplementary reports attached to the bill of complaint, and marked Exhibits "B" and "C;" and that the said board did change the amount of the total value of the shares of capital stock, computed against said defendant company for the year 1874, in accordance with the statements and claim stated in said Exhibit B, but that the said board disregarded the statements contained in said supplementary report, Exhibit C, in relation to five millions five hundred and forty thousand five hundred dollars (5,540,500.00) of the amount of indebtedness returned in said original report, and included the same, less 40% ther'of, in the amount of indebtedness of said company considered by the said board under its said rules for the assessment of the capital-stock and franchise of said company, (as more fully appears from the proceedings of same State board, 1874, page 80.)

Defendants al*so* admit that said complainant Kidder requested the said defendant railway company to resist the taxation complained of in said bill, and that said railway company declined to comply with his request, as alleged in said bill.

112 And the said defendants insist and submit to the court that the matters averred and stated in said complainants' bill of com-

plaint are insufficient to entitle the complainants to the relief sought thereby, and that said bill is defective for want of equity upon its face, and these defendants ask the same benefits from this defense as they would be entitled to had they demurred to said bill.

And these defendants deny all and all manner of unlawful combinations and confederacy wherewith they are by the said bill charged without this, that there is any other matter, cause, or thing in the said complainants' said bill complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, traversed, and avoided or denied, that is true to the knowledge and belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain,
113 and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JAS. K. EDESALL,
Solr. of Counsel for all the Defts., except the Railroad Company.

(Endorsed:) Filed July 30th, 1875. Wm. H. Bradley, clk.

114 [Auditor s Form No. 12.]

Annual return of the Chicago, Burlington & Quincy Railroad Company to the Auditor of Public Accounts, as required by the 48th section of State revenue law.

SCHEDULE No. 1.

Showing the property denominated "railroad track," belonging to or controlled by the Chicago, Burlington and Quincy Railroad Company on the 1st day of May, 1874, as required of railroad companies, according to section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

COUNTIES.	RIGHT OF WAY AND IMPROVEMENTS THEREON.			TRACK.						Total values returned listed to county.
	Acres.			Main.			Side, second or turnout.			
	No.	Value, excluding improvements.	Value of buildings on right of way. (See Schedule No. 5.)	Miles.	Feet.	Value.	Miles.	Feet.	Value.	
Cook County	255. 13		108, 105 47	15	556	45, 460 92	39	2, 801	73, 052 35	226, 541 09
Du Page	289. 52		8, 150 16	21	3, 517	62, 936 56	21	5, 188	40, 623 80	111, 710 52
Kane	372. 10		153, 786 25	26	416	68, 452 62	22	953	40, 989 55	263, 228 42
Kendall	400. 18		7, 701 80	33	2, 757	88, 763 61	9	3, 058	17, 702 30	114, 167 11
De Kalb	106. 43		3. 170 73	9	4, 008	25, 455 86	1	5, 234	3, 679 90	32, 306 49
Lee	301. 35		4, 331 50	37	5, 068	80, 171 20	1	1, 763	2, 465 05	86, 967 75
La Salle	802. 02		18. 325 31	65	2, 596	17, 820 44	31	305	57, 394 75	247, 540 50
Bureau	939. 33		26, 006 22	72	4, 260	198, 951 24	10	2, 085	19, 209 75	244, 167 21
Henry	456. 88		17, 269 79	35	1, 364	93, 037 92	6	164	11, 145 40	121, 453 11
Knox	1, 505. 25		81, 516 74	71	822	204, 151 42	18	2, 117	34, 004 95	319, 683 11
Warren	260. 26		7, 624 68	22	4, 617	62, 823 69	2	4, 145	5, 146 75	75, 595 12
Henderson	437. 18		7, 871 80	31	2, 150	84, 504 75	6	3, 720	12, 390	104, 766 55
Fulton	625. 80		13, 458	51	2, 656	125, 486 52	4	373	7, 522 55	146, 467 07
McDonough	488. 37		17, 023 47	34	1, 720	103, 306 80	6	419	11, 234 65	131, 564 92
Hancock	559. 35		10, 093 51	41	1, 947	95, 733 93	3	1, 165	5, 951 75	111, 779 20
Adams	718. 19		20, 916 98	55	3, 679	146, 749 88	4	3, 068	8, 465 80	176, 132 66
City of Quincy	33. 32		22, 666	1	2, 484	4, 149 57	8	598	14, 993 30	41, 808 87
Stark County	285. 41		6, 454 10	20	4, 778	49, 670 10	2	316	3, 806 60	59, 930 80
Peoria	449. 50		18, 524 04	44	4, 431	113, 472 10	7	36	12, 948 60	144, 944 74
Schuyler	137. 16		4, 522 30	11	2, 060	27, 063	1	41	1, 862 35	33, 447 65
Mercer	467. 57		9, 125 70	35	3, 648	84, 801 60	3	3, 164	6, 651 40	100, 578 70
Whiteside	481. 68		7, 689 90	38	894	89, 604 30	2	2, 207	4, 468 45	101, 762 65
Totals in State	9, 871. 98	....	$574, 334 44	777	2, 348	$2, 026, 577 45	214	680	$395, 710 00	$2, 906, 544 24

115 SCHEDULE NO. 2.

Showing the property denominated "rolling-stock," belonging to or controlled or operated by the Chicago, Burlington & Quincy Railroad Company on the 1st day of May, 1874, as required of railroad companies, according to section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

(For length of main track on which said rolling-stock is used in each county, see schedule No. 1.)

Description.	No.	Average value.	Total listed value.
Locomotives, all classes	290	2,500	725,000
Passenger cars, all classes	108	700	75,600
Sleeping, dining and drawing-room cars	.....	.....	.....
Express cars	.....	.....	.....
Baggage-cars & mail-cars	63	400	25,200
House-cars & cattle-cars	4,132	175	723,100
Way-cars	117	200	23,400
Coal-cars	.....	.....	.....
Platform-cars	1,697	125	212,125
Wrecking-cars	4	250	1,000
Pay-cars, president' & inspectors' cars	3	1,000	3,000
Hand-cars	407	20	8,140
All other kind of cars, dump-cars & rubble-cars	399	.....	5,970
Total listed value of rolling-stock in Iowa & Illinois	.....	.....	1,802,535

Length of main track on which said rolling-stock is used in Illinois... 777 miles, 2,348 feet.
" " " " elsewhere. 486 miles, 1,035 feet.

Total length of road ..... 1,263 miles, 3,383 feet.

REMARKS.

Proportion of above listed total to be taxed in Illinois $1,108,978 41
" " " not taxable in Illinois 693,556 59
1,802,535 00

116 SCHEDULE NO. 3.

Showing the number of ties in track per mile; the weight of iron or steel per yard used in main and side track; what joints or chairs are used in track; the kind of ballasting of road; quality of buildings or structures on railroad-track; the length of time iron (or steel) in track has been used, and length of time the road has been built; all belonging to or controlled by the Chicago, Burlington & Quincy Railroad Company on the 1st day of May, 1874, and hereby scheduled and returned, as required of railroad companies by section 48 of "An act for the assessment of property, and for the levy and collection of taxes," approved March 30th, 1872.

State number of ties in track, per mile 2,640

State weight of iron and steel per yard in main track, and side, second or turnout.

Iron, weight per yard, main line, 60 lbs.; branches, 54 lbs.
Steel, " " " " " 60 lbs.
Iron, " " " " " 58 lbs.; branches 52 lbs., side, second or turnout.
Steel, " " " " " 60 lbs.; side, second or turnout.

SCHEDULE No. 3.—Continued.

State kind of "joints" or "chairs" used in track.	764.43 miles laid with fish-joint. 14.33 " " " cast-iron chairs. 212.81 " " " wrought.
State kind of ballasting used in road.	Miles 40.00, broken rock. Miles 334.39, coarse & fine gravel. Miles 323.06, no ballast. Miles 80.00, sand.
State number of buildings or other structures on railroad-track	627
State quality of buildings or other structures on railroad-track.	12 stone buildings. 55 brick do. 560 wood do. 627 in fair average condition.
State length of time iron or steel in track has been used.	Steel, about 3 years. Iron in main track & Botavia Branch, and Yates City to Lewistown, 6 to 8 years. Galva to New Boston & from Burlington to Carthage, 5 years. Genava to Streator and Mendota to Prophetstown, 4 years. Prophetstown to Clinton and Carthage to Quincy, 3 years. Shabbona to Rock Falls, 2 years.
State length of time road has been built.	Aurora to Garner Junction and to Galesburg, Peoria, Quincy, & Burlington. Built in 1853 & '54. Yates City to Lewistown, 1861. Chicago to Aurora, 1863. Galva to New Boston, Buda to Elmwood, Carthage to Burlington, & Lewistown to Rusho, 1869. Mendota to Prophetstown, Geneva to Streator, & Burlington to Quincy, 1870. Prophetstown to Clinton, & Shabbona to Rock Falls, 1871 & '72.
State proportion of iron and steel used in main and side, second or turnouts.	Iron, miles 603; feet 5,156, main. Steel, miles 173; feet 2,472, main. Iron, miles 191; feet 740, side, second or turnout. Steel, miles 23; feet , side, second or turnout.

117 SCHEDULE No. 4.

Showing the amount of capital stock authorized, and the number of shares into which such capital stock is divided; the amount of capital stock paid up; the market value, or actual value, of the shares of said stock; the total indebtedness, except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the Chicago, Burlington & Quincy Railroad Company on the 1st day of May, 1874, as required of railroad companies, according to section 48 of "An act for the assessment of property, and for the levy and collection of taxes," approved March 30th, 1872.

This company owns no capital stock; it has all been sold & is now held and owned by the shareholders.

1st. The amount of capital stock authorized and the number of shares into which such capital is divided, with amount of each share: $100,000, which may be increased from time to time to any sum not exceeding the amount required to be expended on account of said road. Sec. 4 Central Military Track R. R. Co.'s charter, approved June 19th, 1852, shares $100.00.	Amount of capital stock, including road in Illinois & Iowa, owned & leased...	$26,430,162 76
	No. of shares, perpetuity..	264,310 & fraction.
	Amount of each share.....	$100
Proportion of capital stock belonging in Illinois and elsewhere.....	Amount of capital in Illinois.	$186,529 10
	" " elsewhere	$778,152 76
	Total.....	$26,431,062 76
2d. The amount of capital stock paid up....	Capital paid up.....	$26,431,062 76
	Proportion paid up in Illinois	$186,529 10
	Proportion paid up elsewhere	$7,778,152 76
	Total.....	$26,431,062 76

SCHEDULE No. 4.—Continued.

			Per share.
3d. The market value, or, if no market value, then the actual value of the shares of stock: All the stock has been created to provide means required to be expended on account of purchase, construction, and equipment of the road pursuant to its charter, and its owners believe it is worth its cost if it is permitted to be operated as heretofore for the equitable mutual benefit of its patrons & owners.		Market value quoted at from 100 to 102 for road in Illinois, & from 97 to 99 for road in Iowa	$100
		Or, actual value, as per condition in	$100
4th. Total amount of all indebtedness except for current expenses for operating the road:		Total indebtedness, including current expenses for operating the road in Illinois	$17,805,198 02
Debt	$20,548,625	Deduct indebtedness for current expenses created in operating the road	$1,100,528 84
Less fund... $1,022,000		Total	$16,704,669 18
Ropt. P..... 1,476,925 05			
½ bu'lt bridge 626,178 47			
Bu'lt station. 718,852 30			
	3,843,955 82		
	16,704,669 18		
5th. The total listed valuation of all tangible property in this State		1. Railroad-track	$2,996,621 89
		2. Rolling-stock, (proportion in Illinois)	$1,108,978 41
		3. Real estate, lands.	$8,236 07
		4. Real estate, lots	$6,928 53
		5. Personal property	$143,482 72
		Total	$4,264,247 62

118 STATE OF ILLINOIS,
Cook County, ss :

J. M. Walker, president, and A. T. Hall, secretary, of the railroad company, being duly sworn, deposed and say, each for himself, that they are the above-entitled officers of the said rail company, and that the foregoing schedules, respectively numbered one, (1,) two, (2,) three, (3,) and four, (4,) contain and are full, true, and correct statements and schedules of the property (real and personal) of the said railroad company, which are required to be returned to the auditor of public accounts, under provisions of section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30th, 1872.

J. M. WALKER, *Prest.*
A. T. HALL, *Secy.*

Subscribed and sworn to before me this tenth day of August, 1874.
* LESTER O. GODDARD.

AUDITOR'S OFFICE, ILLINOIS,
Springfield, March 1, 1875.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of the annual statement now on file in and forming a part of of record this office.

In testimony whereof I hereunto subscribe my name and affix, the seal of my office, at Springfield, the day and year first above written.

[SEAL.] C. E. LIPPINCOTT,
Auditor Public Accounts.

* May be sworn to before a notary public, justice of the peace, or any officer to administer oaths.

(Indorsed:) No. 12. Return of the Chicago, Burlington & Quincy Railroad Company. May 1st, 1874. Received August 11, 1874. C. E. Lippincott, auditor p. a. No. 2. Henry P. Kidder et al. vs. Herman Leib et al. Answer of the defendants. (Endorsed:) Filed July 30, 1875. W. H. Bradley, clerk. J. R. Edsall, atty. general.

119 *The answer of the defendant, the Chicago, Burlington & Quincy Railroad Company, to the bill of complaint herein filed July 30, 1875.*

In the circuit court of the United States for the northern district of Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

HENRY P. KIDDER AND DANIEL P. STONE
v.
THE CHICAGO, BURLINGTON & QUINCY RAILroad Company, Herman Lieb, & others. } In chancery.

The separate answer of the Chicago, Burlington and Quincy Railroad Company, impleaded with Herman Lieb, and others, to the bill of complaint of Henry P. Kidder and Daniel P. Stone, complainants.

This defendant, the Chicago, Burlington & Quincy Railroad Company, summoned to answer the bill of complaint of the said complainants, for itself alone answering, says that it cannot deny the several charges, allegations, and averments in said bill contained, nor any thereof, but it admits the same, and each and every thereof, to be
120 true as in said bill set forth, and thereon it submits itself to the judgment of this honorable court.

In witness whereof this defendant has caused its name and corporate seal to be hereunto affixed, by its treasurer, this 29th day of July, A. D. 1875.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
[SEAL.] By A. T. HALL,
Treasurer.

Attest:
A. T. HALL,
Secretary.
S. SIBLEY,
Of Counsel.

(Endorsed:) Filed July 30, 1875. W. H. Bradley, clerk.

Replication to the joint and several answers of Herman Lieb, and others, filed July 30th, 1875.

In the circuit court of the United States for the northern district of Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

HENRY P. KIDDER AND DANIEL P. STONE
v.
THE CHICAGO, BURLINGTON & QUINCY RAILroad Company, Herman Lieb et al. } In chancery.

121 The replication of Henry P. Kidder and Daniel P. Stone, complainants, to the joint and several answer of Herman Lieb, H. B. Miller, et al., defendants.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said

answer, for replication thereunto say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

DEXTER & SMITH,
Solicitors for said Complainants.

(Endorsed:) Filed July 30th, 1875. W. H. Bradley, clerk.

122 And afterwards, to wit, on the 6th day of August, A. D. 1875, in the record of the proceedings of said court in said cause is the following entry, to wit:

HENRY P. KIDDER AND DANIEL P. STONE
v.
THE CHICAGO, BURLINGTON & QUINCY RAILroad Company, Herman Lieb, clerk, and H. B. Miller, collector, of Cook County; J. J. Cole, clerk, and Lewis C. Stover, treasurer and collector, of Du Page County; John C. Sherwin, clerk, and Henry C. Paddock, collector, of Kane County; Jeremiah Evarts, clerk, and T. S. Serrine, collector, of Kendall County; C. M. Conrad, clerk, and Robert Hampton, collector, of De Kalb County; James A. Hawley, clerk, and Josiah Little, collector, of Lee County; Hubert A. McCaleb, clerk, and Samuel W. Raymond, collector, of La Salle County; Melvin J. Keith, clerk, and Samuel Edwards, collector, of Bureau County; F. G. Wilton, clerk, and P. H. Beveridge, collector, of Henry County; John S. Winter, clerk, and Edwin T. Ellet, collector, of Knox County; William H. Sexton, clerk, and David D. Parry, collector, of Warren County; David C. Hanna, clerk, and George Bell, sheriff and ex-officio collector, of Henderson County; J. C. Warley, clerk, and Job Walker, collector, of Fulton County; Allen L. Sparks, clerk, and Anthony Thornton, collector, of McDonough County; George J. Rogers, clerk, and Peter Frey, col-
123 lector, of Hancock County; Willis Hazlewood, clerk, and Edwin Cleveland, collector, of Adams County; D. J. Walker, clerk, and Orlando Brace, treasurer, of Stark County; John McClure, clerk, and Isaac Taylor, collector, of Peoria County; John C. Scripps, clerk, and Edward D. Wells, collector, of Schuyler County; C. F. Durstin, clerk, and William N. Graham, collector, of Mercer County; and Edward W. Payne, clerk, and W. H. Thatcher, collector, of Whiteside' County, in the State of Illinois. } In chancery.

And now come the respective parties by their counsel, and by agreement of counsel the several answers heretofore filed by the several defendants, (other than the railroad company,) and the exceptions of the complainants to such answers, are withdrawn from the files, and the answer of said defendants filed July thirtieth, A. D. 1875, is by agreement of parties substituted in the place of the said answers so withdrawn. And now this cause this day came on for final hearing upon the bill, answer, replication, exhibits to the several pleadings, deposition of Amos T. Hall, and stipulation of parties filed in this cause, Dexter & Smith, solicitors and of counsel for the complainants, and J. K. Edsall, attorney-general of the State of Illinois, appearing for all the other defendants, except the railroad company, and S. Sibley appearing
124 as solicitor & counsel for defendant the railroad company, and after argument of counsel and consideration of the court, it is ordered, adjudged, and decreed that the Chicago, Burlington and Quincy Railroad Company be forever restrained and enjoined from paying, and all the other defendants to this suit be forever enjoined and restrained from collecting or in anywise attempting to collect, the tax known and designated as the "capital-stock tax" levied for the year A. D. one thousand eight hundred and seventy-four (1874) upon an assessment of capital stock made by the State board of equalization for the State of Illinois against the said railroad company.

And it is adjudged and decreed that the aforesaid tax and the assessment therefor is illegal and void, and the prayer of the bill concerning said tax is granted, but as to the assessment of taxes against the tangible property of said railroad company alleged to be a double assessment, the complainants expressly waiving their objections thereto, the prayer of the bill is denied, and the temporary injunction against the collection thereof hereinbefore made is dissolved, from which said decree all of the defendants in said cause, except the said Chicago, Burlington & Quincy Railroad Company, pray an appeal to the Supreme Court of the United States; and it appearing to the court that the said
125 defendants who have so prayed such appeal have notified the said railroad company thereof, & requested said company in writing to join in such appeal, and that said railroad company have refused to join therein, the appeal of the said defendants who have so prayed therefor is allowed by the court, upon the filing of an appeal-bond in the penal sum of one thousand dollars, conditioned for the due prosecution of said appeal & the payment of costs as required by law, such bond to be executed by John C. Sherwin, Henry C. Paddock, Jeremiah Everts, Tunis S. Serine, C. M. Conrad, Robert Hampton, H. A. McCaleb, Samuel W. Raymond, M. J. Keith, Samuel Edwards, F. G. Welton, Peter H. Beveridge, John S. Winter, Edward T. Elliott, W. H. Sexton, D. D. Parry, D. C. Hanna, George Bell, Isaiah C. Worley, Job Walker, A. L. Sparks, A. Thornton, George J. Rogers, Peter Frey, Edwin Cleveland, Willis Hazelwood, D. J. Walker, O. Brace, John C. Scripps, Edward D. Wells, C. F. Dustin, W. H. Graham, William H. Thatcher, E. W. Payne, as principals, and Charles E. Lippincott, as security, and such appeal-bond, executed as aforesaid, having been filed, the same is approved, and said appeal is allowed by the court.

It is further ordered by the court (the counsel for the respective
126 parties consenting thereto) that the books containing the published proceedings of the State board of equalization of the State of Illinois for the years 1873 and 1874, offered in evidence, be sent up and transmitted to the Supreme Court in lieu of copies thereof, & that the same may be omitted from the transcript of the certificate of evidence,

but be referred to and identified therein. And it is ordered by the court that this decree be entered, nunc pro tunc, as of the 30th day of July, A. D. 1875.

Certificate of evidence.

HENRY P. KIDDER & DANIEL P. STONE
v.
C., B. & Q. R. R. CO. AND HERMAN LIEB ET AL. } Equity.

It is hereby certified that the above cause was heard and determined upon the following pleadings and evidence, viz: The bill of complaint; the answer of defts. filed July 30th, 1875; the replication filed July 30, 1875; the exhibits attached to said bill and answer; the deposition of Amos T. Hall, and the stipulation of the parties by counsel, both filed herein on the 30th day of July, 1875, and the printed copies of the proceedings of the State board of equalization for the years 1873 & 1874, lodged with the clerk.

127 And the foregoing was all the evidence offered and considered by the court with the pleadings upon the trial and determination of the case.

And this certificate of evidence is made and sealed this 30th day of July, 1875.

THOMAS DRUMMOND,
Cir't Judge.

(Endorsed:) Filed July 30th, 1875. W. H. Bradley, clerk.

The deposition of Amos T. Hall, referred to in the foregoing certificate of evidence, reads in the words and figures following, to wit:

128 Circuit court of the United States, northern district of Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

HENRY P. KIDDER AND DANIEL P. STONE
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILroad Company et al.

STATE OF ILLINOIS,
Cook County, ss:

Before me, Chas. L. Allen, a notary public in and for the county and State aforesaid, personally appeared AMOS T. HALL, this 29th day of July, 1875, who, having been by me first duly sworn, deposes and says as follows:

I am the secretary and treasurer of the Chicago, Burlington and Quincy Railroad Company, and have been for many years last past, and reside in the city of Chicago. I made the returns for said company to the auditor of public accounts of the State of Illinois of the property of said company for the year 1874. I also made returns to the

129 local assessors of the property of said road. Said company had no other property of any kind or description whatsoever, except the property so returned and known as tangible property, and which was

thereafter assessed as tangible property by the State board of equalization and the local assessors against said defendant railway company, for the year 1874, at the sum of seven million eight hundred and seventy-three thousand eight hundred and ninety-seven dollars, ($7,873,897.00,) upon which assessment said railroad company has paid its taxes to the various authorities of the State of Illinois authorized to receive the same. I have read Exhibit B and C, attached to the bill of complaint in this cause. I am the author of the same, and know the facts therein stated to be true. The actual amount of capital-stock of the defendant company in the State of Illinois is sixteen million seven hundred and twenty-three thousand seven hundred and nine dollars and twenty cents, ($16,723,709.20.) In assessing what is known as capital-stock tax against the defendant railway company for the year 1874,
130 the said State board of equalization computed sixteen million seven hundred and four thousand six hundred and sixty-nine dollars and eighteen cents ($16,704,669.18) of bonded indebtedness of said defendant company, while, in point of fact, the total and actual amount of the bonded indebtedness of said company at that time was only eleven million one hundred and sixty-four thousand one hundred and sixty-nine dollars and eighteen cents, ($11,164,169.18.) To this last-mentioned amount said State board added five million five hundred and forty thousand five hundred dollars ($5,440,500) of the bonded indebtedness of six other railroad companies which are being operated by the defendant company under leases; said bonded indebtedness of these six railroads was created by the several respective companies before said defendant company came into possession of them. The defendant company has never assumed said bonded indebtedness of said leased roads, nor is it in any way liable therefor.

AMOS T. HALL.

131 STATE OF ILLINOIS,
Cook County, ss:

I do hereby certify that the above-named Amos T. Hall personally appeared before me this 29th day of July, 1875, and, being by me duly sworn, states that the matters and things set forth in the above deposition by him subscribed are true.

Witness my hand and official seal this 29th day of July, 1875.

[SEAL.] CHAS. L. ALLEN,
Notary Public, Cook County, Ill.

The foregoing deposition of Amos T. Hall was taken by consent of parties, and may be read in evidence upon the hearing of said cause.

It is further agreed that the published reports of the proceedings of the State board of equalization for the State of Illinois, for the years
1873 and 1874, may be read in evidence and referred to by either
132 party, both in the circuit and Supreme courts, as proper evidence of the proceedings had by said State board, and the defendants will lodge copies thereof with the clerks for the use of the said courts.

It is also agreed that the exhibits to both bill and answer shall be read in evidence as duly proved, and other authentication or proof of all the aforesaid documents is hereby waived.

It is also agreed that the taxes were levied by the State board of equalization on their equalized valuation of the market value of all bonds and shares of stock of all railroad companies, which equalized valuation was sixty per cent. of such market value, and therefore that sixty per cent. only of the $5,540,500 bonded debt of other companies

(as testified by A. T. Hall in his deposition) was the equalized valuation of such bonded debt included in the aggregate assessment for capital-stock tax against the defendant railroad company.

DEXTER & SMITH,
Solrs. for Complt.

133 JAS. K. EDSALL,
Sol. for all of the Defts. except said Railroad Company.

(Endorsed:) Filed July 30, '75. W. H. Bradley, clerk.

134 *Appeal-bond.*

Know all men by these presents that we, John C. Sherwin, clerk, & Henry C. Paddock, collector, of Kane County; J. Evarts, clerk, & T. S. Serrine, collector, of Kendall County; C. M. Conrad, clerk, & Robert Hampton, collector, of De Kalb County; H. A. McCaleb, clerk, & Samuel W. Raymond, collector, of La Salle County; W. J. Keith, clerk, and Samuel Edwards, collector, of Bureau County; F. G. Wilton, clerk, & P. H. Beveridge, collector, of Henry County; Jno. S. Winter, clerk, and E. T. Ellett, collector, of Knox County; W. H. Sexton, clerk, & D. D. Parry, collector, of Warren County; D. C. Hanna, clerk, & George Bell, collector, of Henderson County; J. C. Worley, clerk, & Job Walker, collector, of Fulton County; A. L. Sparks, clerk, and Anthony Thornton, collector, McDonough County; G. J. Rogers, clerk, & Peter Frey, collector, Hancock County; W. Hazelwood, clerk, and Ed. Cleveland, collector, of Adams County; D. J. Walker, clerk, & O. Brace, collector, of Stark County; J. C. Scripp, clerk, & E. D. Wells, collector, of Schuyler County; C. F. Durstin, clerk, & W. H. Graham, collector, of Mercer County; E. W. Payne, clerk, & W. H. Thatcher, collector, of Whiteside County, as principals, and Charles E. Lippincott, as security, are held and firmly bound unto Henry P. Kidder and Daniel P. Stone in the penal
135 sum of one thousand dollars lawful money of the United States; for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents. Sealed with our seals and dated this 31st day of July, A. D. 1875.

Whereas, heretofore, to wit, on the 31st day of July, 1875, at the July term, A. D. 1875, of the circuit court of the United States for the seventh circuit and northern district of Illinois, in a certain suit pending in said circuit court on the chancery side thereof wherein the obligees above named were complainants, and H. B. Miller, collector, & Herman Lieb, clerk, of Cook County; J. J. Cole, clerk, & L. C. Stover, collector, of Du Page County; J. C. Sherwin, clerk, & Henry C. Paddock, collector, of Kane County; J. Evarts, clerk, & T. S. Serrine, collector, of Kendall County; C. M. Conrad, clerk, and R. Hampton, collector, of De Kalb County; J. A. Hawley, clerk, & J. Little, collector, of Lee County; H. A. McCaleb, clerk, & Samuel W. Raymond, collector, of La Salle Co.; M. J. Keith, clerk, & S. Edwards, collector, of Bureau County; F. G. Wilton, clerk, & P. H. Beveridge, collector, of Henry County; J. S. Winter, clerk, & E. F. Ellett, collector of Knox County; W. H. Sexton, clerk, & D. D. Parry, collector, of Warren County; D. C. Hanna, clerk, & George Bell, collector, of Henderson County; J. C. Worley,
136 clerk, & Job Walker, collector, of Fulton Co.; A. L. Sparks, clerk, & A. Thornton, collector, of Hancock County; D. J. Walker, clerk, & O. Brace, collector, of Stark County; J. McClure, clerk, & J.

Taylor, collector, Peoria County; J. C. Scripps, clerk, & E. D. Wells, collector Schuyler County; C. F. Durstin, clerk, W. N. Graham, collector, Mercer County; E. W. Payne, clerk, & W. H. Thatcher, collector, of Whitesides County, all of the State of Illinois, impleaded with the Chicago, Burlington & Quincy Railroad Company, were defendants. The said circuit court rendered a decree enjoining and restraining all of said defendants who were such county collectors from collecting certain taxes therein specified from the property of the said railroad company, and from which decree all of said defendants in said suit, except said railroad company, prayed an appeal to the Supreme Court of the United States, which was allowed by the said circuit court.

Now, therefore, the condition of this obligation is such that if the above-named defendants in such decree who have so appealed shall prosecute their said appeal to effect and answer all costs if they shall fail to make good their said appeal, then this obligation to be void; otherwise to remain in full force and virtue.

JOHN C. SHERWIN, [SEAL.]
By JAMES K. EDSALL, *his Atty. in Fact.*
137 HENRY C. PADDOCK, [SEAL.]
By JAMES K. EDSALL, *his Atty. in Fact.*
JEREMIAH EVERTS, [SEAL.]
By JAMES K. EDSALL, *his Atty. in Fact.*
TUNIS S. SERINE, [SEAL.]
By JAMES K. EDSALL, *his Atty. in Fact.*
C. M. CONRAD, [SEAL.]
By JAMES K. EDSALL, *his Atty. in Fact.*
ROBERT HAMPTON, [SEAL.]
By JAMES K. EDSALL, *his Atty. in Fact.*
H. A. McCALEB, [SEAL.]
By JAMES K. EDSALL, *his Atty. in Fact.*
SAMUEL W. RAYMOND, [SEAL.]
By JAMES K. EDSALL, *his Atty. in Fact.*
M. J. KEITH, [SEAL.]
By JAMES K. EDSALL, *his Atty. in Fact.*
SAMUEL EDWARDS, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
T. G. WELTON, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
PETER H. BEVERIDGE, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
JOHN S. WINTER, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
EDWARD T. ELLIOTT, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
W. H. SEXTON, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
D. D. PARRY, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
D. C. HANNA, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
138 GEORGE BELL, [SEAL.
By JAS. K. EDSALL, *his Atty. in Fact.*
ISAIAH C. WORLEY, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
JOB WALKER, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*

A. L. SPARKS, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
A. THORNTON, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
GEORGE J. ROGERS, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
PETER FREY, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
EDWIN CLEVELAND, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
WILLIS HAZELWOOD, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
D. J. WALKER, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
C. E. LIPPINCOTT, [SEAL.]
O. BRACE, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
JOHN C. SCRIPPS, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
EDWARD D. WELLS, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
C. T. DURSTON, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
W. H. GRAHAM, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
WILLIAM H. THATCHER, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*
139 E. W. PAYNE, [SEAL.]
By JAS. K. EDSALL, *his Atty. in Fact.*

Approved.

THOMAS DRUMMOND.

JULY 30, 1875.

(Endorsed:) Filed July 30th, 1875. W. H. Bradley, clerk.

140 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true transcript of the record and proceedings had in the cause wherein Henry P. Kidder et al. were the complainants and the Chicago, Burlington & Quincy Railroad Company, Herman Lieb and others, were the defendants, as the same appears from the records of said court now remaining in my custody; and I further certify that the exhibits marked "A" & "B" are copies of the printed proceedings of the State board of equalization of the State of Illinois, for the years 1873 & 1874, deposited in this office to be transmitted with the record to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 20th day of September, A. D. 1875, and of our Independence the 100th year.

WM. H. BRADLEY, *Clerk.*

141 *Assignment of errors.*

In the Supreme Court of the United States, October term, A. D. 1875.

HERMAN LIEB, CLERK, AND HENRY B. MILLER, collector, of Cook County; J. J. Cole, clerk, and Lewis C. Stover, collector, of DuPage County; John C. Sherwin, clerk, and H. C. Paddock, collector, of Kane County; J. Evarts, clerk, and T. S. Serrine, collector, of Kendall County; C. M. Conrad, clerk, and Robert Hampton, collector, of De Kalb County; James A. Hawley, clerk, and J. Little, collector, of Lee County; H. A. McCaleb, clerk, and S. W. Raymond, collector, of La Salle County; Melvin J. Keith, clerk, and Samuel Edwards, collector, of Bureau County; F. G. Wilton, clerk, and P. H. Beveridge, collector, of Henry County; John S. Winter, clerk, and Edwin T. Ellett, collector, of Knox County; W. H. Sexton, clerk, and David D. Parry, collector, of Warren County; D. C. Hanna, clerk, and George Bell, collector, of Henderson County; J. C. Worley, clerk, and Job Walker, collector, of Fulton County; A. L. Sparks, clerk, and Anthony Thornton, collector, of McDonough County; George J. Rogers, clerk, and Peter Frey, collector, of Hancock County; Willis Hazelwood, clerk, and Edwin Cleveland, collector, of Adams County; D. J. Walker, clerk, and Orlando Brace, collector, of Stark County; John McClure, clerk, and Isaac Taylor, collector, of Peoria County; J. C. Scripps, clerk, and E. D. Wells, collector, of Schuyler County; C. F. Durstan, clerk, and W. N. Graham, collector, of Mercer County; E. W. Payne, clerk, and W. H. Thatcher, collector, of Whiteside' County, appellants,

vs.

HENRY P. KIDDER AND DANIEL P. STONE, appellees.

142 And now come the appellants above named, by James K. Edsall, the attorney-general of the State of Illinois, and say that in the records and proceedings aforesaid there is manifest error in this, to wit:

First. The court below erred in perpetually enjoining the collection of the said State, county, and other municipal taxes assessed against said railroad company in said decree mentioned.

Second. The court below erred in not dismissing the complainants' bill of complaint and dissolving the temporary injunction.

And this the said appellants are ready to verify, etc., wherefore the' pray that said decree may be reversed and for naught held, etc., and that their costs may be adjudged to them, etc.

JAS. K. EDSALL,
Attorney-General of Illinois, Counsel for Appellants.

143 Supreme Court of the United States, October term, A. D. 1875.

HERMAN LIEB AND HENRY B. MILLER AND others, county clerks & collectors, appellants,
vs.
HENRY P. KIDDER AND DANIEL P. STONE, appellees.
} No. 703.

The counsel for the respective parties being of the opinion that the books containing the proceedings of the State board of equalization of the State of Illinois, which were offered in evidence in the court below and by that court ordered to be transmitted to this court in lieu of copies thereof, can be as conveniently referred to in their present form as if printed in the record, the respective parties hereby stipulate and consent that such books be not printed with the record.

Dated October 28th, 1875.

JAS. K. EDSALL,
Counsel for Appellants.
O. H. BROWNING AND
DEXTER & SMITH,
Counsel for Appellees.

Filed Nov. 1st, 1875.

(Indorsement on cover:) No. 703. Herman Lieb, clerk, & Henry B. Miller, collector, of Cook Co. et al., appellants, vs. Henry P. Kidder & Daniel P. Stone. N. Illinois C. C. U. S. Filed 13th October, 1875.

No. 703.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A.D. 1875.

HERMAN LIEB, *Clerk*, AND HENRY B. MILLER, *Collector, et al.*
Appellants,

vs.

HENRY P. KIDDER AND DANIEL P. STONE, Appellees.

BRIEF FOR APPELLANTS.

JAMES K. EDSALL,
Attorney General of Illinois,
FOR APPELLANTS.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1875.

HERMAN LIEB, Clerk, and HENRY B. MILLER, Collector of Cook County, and the County Clerks and Collectors of twenty other Counties, *Appellants.*

vs.

HENRY P. KIDDER and DANIEL P. STONE, *Appellees.*

STATEMENT OF THE CASE.

The cause was heard upon the bill, answer, (printed Record, pp. 59–63) replication, proofs and exhibits, including an agreed statement of the facts (*Ib.* pp. 70, 71.) The record is quite voluminous, but its material parts may be summarized as follows:

It appears from the record—

1. That the Chicago, Burlington and Quincy Railroad Company was a corporation organized under the laws of the State of Illinois; that on the first day of May, 1874, there had been subscribed and paid up on its capital stock, for the portion of its road in Illinois, the sum of $16,723,709, for which certificates of stock had been issued in shares of $100 each, which were worth at least par in the hands of the shareholders. [Printed Record, p. 66.]

2. That the Company returned its bonded debt to the Auditor at $16,704,669, (*Ib.* p. 66) but the Company subsequently addressed a communication to the Auditor, stating that $5,440,500 of such indebtedness was in fact the indebtedness of companies whose lines of road it had leased, and that its own bonded indebtedness was the sum of $11,164,196 18. (*Ib.* p. 50.)

3. That prior to that date said Company had become the lessee of the American Central Railroad, the Dixon, Peoria and Hannibal Rail-

road, the Ottawa, Oswego and Fox River Valley Railroad, the Illinois Grand Trunk Railroad, the Peoria and Hannibal Railroad, the Carthage and Burlington Railroad, and the Quincy and Warsaw Railroad, all in the State of Illinois, and the Keokuk and St. Paul Railroad, in the State of Iowa, the bonded indebtedness of which leased railroads amounted in the aggregate to the sum of $6,756,000. That said Company had the possession and the perpetual right to control and operate said leased railroads, and to exercise and use their franchises, and was legally and justly subject to be assessed on all their property, but was not liable for the payment of their bonded indebtedness.

4. That the tangible property of said Chicago, Burlington and Quincy Railroad Company, including that upon its leased lines in Illinois, was assessed or valued for the purposes of taxation at $7,873,897, and that the said company was assessed by the State Board of Equalization upon its capital stock and franchises the sum of $12,123,668, over and above the assessed value of its tangible property, making in all a total assessment or valuation of the property, capital and franchises of said company for taxation of $19,997,565.

5. In order to ascertain the value of the capital stock or property of such companies, including their franchises, over and above the assessed value of their tangible property, the State Board adopted and acted upon a rule the material parts of which are as follows:

First. The market or fair cash value of the shares of capital stock, and the market or fair cash value of the debt, excluding from such debt the debt for current expenses, shall be combined or added together, and the aggregate amount so ascertained shall be taken and held to be the fair cash value of the capital stock, including franchises, respectively, of such corporations.

Second. From the aggregate amount, ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property respectively of such companies and associations, (such equalized or assessed valuation being taken in each case as the same may be determined by the equalization or assessment of property by the Board,) and the amount remaining in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise, which this Board is required by law to assess respectively against companies and associations.

6. In the application of this rule to the assessment of the capital stock and franchises of the Chicago, Burlington and Quincy Railroad Company the State Board estimated the bonded indebtedness of the Company at $16,704,669, and did not deduct therefrom the $5,400,500

which the Company by its supplementary returns claimed to be the indebtedness of its leased roads. It is admitted that said $5,400,500, ought to have been deducted, and that to the extent that it increased the assessment under the designation capital stock, the same should be deducted from such assessment; that the State Board, in order to equalize the assessment of the capital stock and franchises with the assessment of other property generally in the State, deducted forty per cent. from its total ascertained value, and that consequently ($3,240,300) 60 per cent. of said $5,400,500 was actually included in said assessment of capital stock, by reason of including such indebtedness of the leased companies therein. [Printed Record, p. 71.]

This leaves the assessment or valuation of the capital or property of the Company (including its franchise) over and above the assessed value of its tangible property, upon which appellants claim the right to collect State, county and municipal taxes, at the sum of $8,683,368.

7. Such assessment of the property and franchises of the Company under the designation of capital stock was, in pursuance of the statute, apportioned and distributed to the various counties through which the road extended, in proportion to the number of miles of main track in each; and upon such assessment or valuation, so apportioned to each county, the county clerks extended the rates fixed by the proper authorities for the State, county, town and other municipal taxes, and made out the proper collectors' books or warrants for the collection of such taxes, and delivered the same to the collector.

The court below passed a decree declaring the assessment under the designation "capital stock" illegal and void, and perpetually enjoining the Railroad Company from paying, and the other defendants from collecting the State, county, town and other municipal taxes levied thereon. From this decree the present appeal was taken.

ASSIGNMENT OF ERRORS.

First. The court below erred in perpetually enjoining the collection of the said State, county and other municipal taxes assessed against said Railroad Company in said decree mentioned.

Second. The court below erred in not dismissing the complainants' bill of complaint, and dissolving the temporary injunction.

BRIEF FOR APPELLANTS.

The following appear to be the principal grounds upon which the appellees in their bill of complaint claimed that the assessment under the designation of "capital stock" was illegal:

1. That the Company did not own its capital stock nor its bonded indebtedness, but that the same were owned by its stockholders and creditors, and therefore the same ought not be assessed against the Company.

2. That the tangible property of the Company included all the property owned by it, except its franchises, and that such franchises could not be assessed as property by valuation.

3. That a large number of railroad companies in the State were not assessed upon their capital stock and franchises. [Printed Record, pp. 24, 25.]

4. That the statute of Illinois under which the assessment was made is repugnant to the provisions of the Constitution of the State, which it is said "provides that all taxes shall be uniform as to the class upon which they operate, and that no law impairing the obligation of contracts shall be passed." [Printed Record, p. 23.]

5. That said statute is repugnant to the provisions of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts. (*Ibid.*)

The bill, however, does not contain any averment which has any tendency to show that the State ever entered into any contract as to the mode in which this Company should be taxed, or in any manner exempting it from taxation. [*Providence Bank* v. *Billings*, 4 Peters, 514–558.

We shall endeavor to show that these objections either have no foundation in fact, or are based upon a misapprehension of the laws of the State bearing upon the question.

I.

Under the Statutes of Illinois, Railroad Corporations may be assessed upon their Capital Stock and Franchises.

The Revenue Law of Illinois contains the following provisions relative to the assessment of such corporations:

"*Fourth*—The capital stock of all companies and associations now or hereafter created under the laws of this State, shall be so valued by the State Board of Equalization as to ascertain and determine, respectively, the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association. Said board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just; and such rules and principles when so

adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject, however, to such change, alteration or amendment as may be found, from time to time, to be necessary, by said board: *Provided*, that in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of capital stock of any such company or association shall not be assessed or taxed in this State. This clause shall not apply to the capital stock or shares of capital stock of banks organized under the general banking laws of this State."

[*Rev. Stat. of Ill. of* 1874, p. 858, § 3.

"§ 48. At the same time that the lists or schedules are hereinbefore required to be returned to the county clerks, the person, company or corporation, running, operating or constructing any railroad in this State, shall return to the Auditor of Public Accounts sworn statements or schedules, as follows:

First—Of the property denominated "railroad track," giving the length of the main and side or second tracks and turnouts, and showing the proportions in each county, and the total in the State.

Second—The "rolling stock," giving the length of the main track in each county, the total in this State, and the entire length of the road.

Third—Showing the number of ties in track per mile, the weight of iron or steel per yard, used in main and side tracks; what joints or chairs are used in track; the ballasting of road, whether graveled or dirt; the number and quality of buildings or other structures on "railroad track;" the length of time iron in track has been used, and the length of time the road has been built.

Fourth—A statement or schedule showing—

1. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.
2. The amount of capital stock paid up.
3. The market value, or if no market value, then the actual value of the shares of stock.
4. The total amount of all indebtedness, except for current expenses for operating the road.
5. The total listed valuation of all its tangible property in this State.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the Auditor of Public Accounts."

—[*Ibid.* p. 861.

"§ 50. The Auditor shall annually, on the meeting of the State Board of Equalization, lay before said board the statements and schedules herein required to be returned to him, and said board shall assess such property in the manner hereinafter provided." [*Ibid.* p. 867.

"§ 108. The State Board of Equalization shall assess the capital stock of each company or association, respectively, now or hereafter incorporated under the laws of this State, in the manner hereinbefore in this act provided." (*Ibid.* p. 875.)

"§ 110. The aggregate amount of capital stock of railroad or telegraph companies assessed by said board shall be distributed proportionately by said board to the several counties in like manner that the property of railroads denominated "railroad track" is distributed. The amount so determined shall be certified by the Auditor to the county clerks of the proper counties. The county clerk shall in like manner distribute the value, so certified to him by the Auditor, to the county and to the several towns, districts, villages and cities in his county entitled to proportionate value of such capital stock. And said clerk shall extend taxes against such values the same as against other property in such towns, districts, villages and cities." (*Ibid.* p. 876.)

Other sections of the statute make provision for the assessment of the tangible property of such corporations, under the designation of "railroad track," "rolling stock," "lands and lots other than railroad track," and personal property found at the various stations other than rolling stock, (*Ibid.* pp. 865–867, 876;) but with these provisions we have no immediate concern, as the validity of that portion of the assessment is not questioned in this case.

It has never been claimed, on the part of appellants or the State of Illinois, that the statute authorizes the State Board to assess a corporation upon the shares of stock owned by the stockholders, nor upon the debts of the corporation owned by its creditors. It is claimed, however, that such corporations may be assessed upon their capital or property and franchises, and that in order to ascertain the value of such property and franchises the market value of the shares of stock and funded debt of the corporation may be taken into consideration.

This brings us to the question,

II.

What is the proper meaning of the terms "Capital Stock, including the Franchise," as used in the Statute?

This question (with all others involved in the present case) has been maturely considered and determined by the Supreme Court of Illinois, in a series of recent unreported decisions, of which we have filed herewith pamphlet copies for the use of the court, and to which we shall refer in this brief as "Illinois Tax Injunction Cases."

The Supreme Court of Illinois there held—

1. That the words "capital stock" as used in the Revenue Law of the State, mean the *property* of the corporation, and not the shares of stock owned by the shareholders, either separately or in the aggregate.

2. It was competent for the Legislature, under the State Constitution, to require the "capital stock" of corporations, as thus construed, to be assessed for the purpose of taxation against the corporation.

3. That the franchise of a corporation is property, and as such it may be a proper object of taxation, in proportion to its value the same as other property. (Illinois Tax Injunction Cases, pp. 3, 36.)

This construction of the statute is sustained by the general current of authority.

Bank of the Republic v. *Hamilton Co.*, 21 Ill. 53–63.

It is held that statutes exempting the "capital stock" of a corporation from taxation exempts all property of the company necessary to carry on its business.

Rome R. R. Co. v. *Mayor and Council of Rome*, 14 Ga. 215.
Hannibal and St. Jo. R. R. Co. v. *Shacklett*, 30 Mo. (9 Jones,) 550.
New Haven v. *City Bank*, 31 Conn., 106.
Abbott's Digest of "*Law Corporations*," p. 46, § 136–141.

If statutes exempting the "capital stock" of a corporation from taxation are construed as exempting its capital or property, by parity of reasoning, statutes providing for the taxation of the "capital stock" of a corporation may be construed as requiring the capital or property of the corporation to be taxed.

The distinction between the capital stock, or capital of a corporation, which is the property of the corporation, and the certificates of shares therein, which are owned by the shareholders, has been frequently recognized in this court.

Van Allen v. *The Assessors*, 3 Wallace, 583, 584.
National Bank v. *Commonwealth*, 9 Wallace, 353–9.
People v. *Commissioners*, 4 Wallace, 258.

That the words "capital stock" are used in the Revenue Laws of the State as meaning the capital or property of the corporation, is demonstrated in the opinion of the Supreme Court of Illinois in *Porter* v. *Rockford, Rock Island and St. Louis R. R. Co.* 76 Ill. Rep. 561.

Ill. Tax Inj. Cases, pp. 7–11.

It is undeniable that a corporation may be assessed upon its "capital stock" as thus construed, including its franchise. (*Ibid.* p. 12.) "It is not questioned that the State may tax the franchises of companies crea-

ted by them, and that the tax may be proportioned *either to the value of the franchise granted* or to the extent of its exercise."

State Tax on Railway Gross Receipts, 15 Wall. 296.
Society for Savings v. *Coit*, 6 Wall. 594.
Cooley's Const. Limitations, 496.

The statute of Illinois requires the value of the franchise to be ascertained in connection with the valuation of the capital or property of the corporation; and the excess of the value of the entire property and franchise of the corporation over and above the assessed value of the tangible property is required to be assessed under the designation of "capital stock." (*Ante*, p. 4. *Rev. Statutes of Illinois of* 1874, p. 858, § 3.)

The statute requires the value of the "capital stock, *including* the franchise" to be ascertained; so that the assessment under the designation "capital stock" embraces the assessment of the franchise.

III.

THE RULE ADOPTED BY THE BOARD TO ASCERTAIN THE VALUE OF THE CAPITAL STOCK AND FRANCHISES OF A CORPORATION, IS AT LEAST THEORETICALLY CORRECT.

It may be conceded that any attempt to ascertain the value of the property and franchise of a corporation is attended with much difficulty; yet the law imposed this duty upon the State Board of Equalization.

To enable the Board to discharge this duty the statute requires that there be made by the company, and placed before that body, among other things—

"A statement or schedule showing:

1. The amount of capital stock authorized and the number of shares into which such capital stock is divided.

2. The amount of capital stock paid up.

3. The market value, or if no market value, then the actual value of the shares of stock.

4. The total amount of all indebtedness, except for current expenses for operating the road.

5. The total listed valuation of all its tangible property in this State."

Revised Statutes of Illinois of 1874, p. 866, § 48.

The Legislature must have intended that the Board would make use of this information.

The task before the Board was first to ascertain the value of every species of property owned by the corporation, including its franchise;

and when this was done, to deduct therefrom the assessed value of its tangible property, and thus avoid making a double assessment.

The following is the substance of the rule in question:

"*First*—The market or fair cash value of the shares of capital stock and the market or fair cash value of the debt (excluding from such debt the indebtedness for current expenses,) shall be combined or added together; and the aggregate amount so ascertained shall be taken and held to be the fair cash value of the capital stock including the franchise respectively, of such companies and associations.

"*Second*—From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property, respectively, of such companies and associations."

This rule, it will be observed, utilizes the information required to be placed before the Board.

Does not the market or actual value of the shares of stock in the hands of the stockholders, and the market or actual value of the bonded debt of the corporation in the hands of its creditors, serve to indicate the value of all the property, including the franchise, of the corporation?

It is the value of the property and franchise of the corporation which gives value to the bonds and shares of stock of the corporation. In theory at least, the value of the property and franchise of the corporation is equal to the value of the bonded debt and shares of stock in the corporation.

If a corporation is free from debt, the aggregate value of the shares of stock ought to be equal to the value of all the property and franchises of the corporation; but if the corporation is in debt, then the value of the shares of stock must be depreciated in value in a corresponding amount, so long as the value of the property owned by it remains the same.

It is the value, or at least supposed value, of the property and franchises of the corporation which floats and sustains the value of the shares of stock and funded debt of the corporation upon the market. The latter can never rise higher than the former, unless some undue pressure is brought to bear thereon, to cause such abnormal condition.

In equity, "the stock and other property of a private corporation is deemed a trust fund for the payment of the debts of the corporation; so that the creditors have a lien or right of priority of payment on it, in preference to any of the stockholders in the corporation." 2 Story's Eq. Jur., § 1252.

The stockholders are not entitled to any dividend, or to participate in a distribution of the assets of the corporation, until the corporate debts are paid.

Mumma v. *The Potomac Company*, 8 Pet. 281–286.
Wood v. *Dummer*, 3 Mason R., 308.

It necessarily follows, therefore, that if the shares of stock in a corporation, which is in debt, are worth any given sum, the value of the property and franchises must be sufficient to equal the aggregate of the debt and value of the shares of stock.

It should be borne in mind that the purpose of the Board in the adoption of this rule was to ascertain the value of all the property or capital and franchises of the corporation, less the assessed value of its tangible property, and not merely the aggregate value of the shares of stock in the hands of the stockholders.

To attain this end the rule is based upon incontestable principles. For example: A corporation is organized with a cash capital of $100,000, actually paid into the treasury. It would unquestionably have $100,000 which ought to be assessed for the purposes of taxation. If the corporation should also negotiate a loan for $100,000, and issue its bonds therefor, and receive the money, it would thereby become the owner of an additional $100,000, which it could invest in property or in its business, as it saw fit. By the creation of this debt and the acquisition of this additional $100,000, the value of the shares in the hands of the shareholders would not be affected. In such case, should it be assessed on the basis of $100,000, or $200,000?

A citizen, or natural person, is entitled to no deduction upon the ground that he is in debt for property which he has purchased, or money he has borrowed and invested in property.

The People v. *Rhodes*, 15 Ill. 304.
The People v. *Worthington*, 21 Ill. 171.
McConn v. *Roberts*, 25 Iowa, 152.

What is there in the nature of a corporation, that it is entitled to greater immunities than is accorded to a citizen, under the same circumstances?

If A owns a farm worth $10,000, subject to a mortgage for $5,000, the net value of his interest in the farm, subject to the lien of the mortgage, would be $5,000.

Every debt of a corporation is equivalent to a mortgage upon its property, as against its shareholders. 2 Story's Eq. Jur. § 1252.

If an incorporated company owned a farm of the same value, subject to a mortgage, or debt, for the like amount, and owned no other prop-

erty, the aggregate value of all the shares would, in fact, be the sum of $5,000.

If the assessment was made on the simple aggregate value of the shares in its capital stock, it would only be required to pay one-half the amount of taxes the natural person would pay.

By the application of this rule, which the Board of Equalization is said to have acted upon, the citizen and corporation would be placed upon an equality for the purposes of taxation.

A further illustration of the practical workings of the rule may be given. Two corporations own property and franchises of equal value. One is free from debt, and the other owes indebtedness equal to one-half the value of its property and franchises. The aggregate value of the shares of stock in the corporation free from debt in such case, would be double that of the other. If we apply the principle which pervades the Illinois Revenue Law, and has been approved by the Supreme Court of the State, no deductions can be made for indebtedness, and each corporation must be assessed an equal amount. This result would be reached by adding the amount or market value of the indebtedness of the debtor corporation to the aggregate value of the shares of its capital stock.

The rule in the question was evidently framed with a view to ascertain, in connection with the capital stock of the corporation, "the value of the intangible thing called franchise." The estimate placed thereon by dealers in the bonds of the corporation, and the shareholders, whose interests in the property and franchise are subject to the charge and incumbrance of such bonds, constitute as fair a basis as any that can be suggested to ascertain the value of such capital and franchise.

Upon this question the Supreme Court of Illinois say:

"It is argued, that by adopting this mode of valuation the board assessed the corporation on the value of the debts which it owes, and which are not in any sense its property.

"We are not to assume that this was done, as it is not enjoined by the Revenue act, and would be in clear violation of the duty imposed on the board. It appears from the resolutions that the object was, to assess the capital stock and franchises of corporations, as is directed by the fourth clause of the 3d section of the Revenue act, and the assessment is, in fact, on the capital stock including the franchise. The averment in the bill in this respect, is contradicted by the exhibits.

"There is a seeming injustice in taxing corporations which are largely indebted and whose earnings are insufficient to pay the accruing interest, as is alleged to be the fact in the present case, to the full extent of the value of all their property and privileges, without regard to their indebtedness; yet it has never been the policy of the Legislature to

make any discrimination in favor of individuals on this account, and corporations can not claim an exemption from taxation, when, under like circumstances, an individual would not also be exempt to the same extent.

"The mode of valuation adopted by the Board of Equalization assumes: 1st. That the value of the aggregate shares of capital stock is equal to the value of all the property, including the franchise, belonging to the corporation, when it is not indebted. 2d. That when the corporation is indebted, the indebtedness proportionally reduces the value of the shares of capital stock. 3d. That the value of the debt is determined by the value of that belonging to the corporation from which its payment can be enforced, so that, however great the nominal amount of the debt, its actual value can never exceed that sum. To illustrate: Where a corporation is free from debt and the aggregate value of its shares of stock is, say $150,000, it is assumed that the value of its capital stock, including its franchise, is $150,000. If the same corporation, still retaining the same property, is, however, indebted $50,000, this will reduce the aggregate value of its shares of stock to $100,000, but, as the law does not exempt corporations or individuals from the payment of taxes on account of indebtedness, it would not be accurate to tax the corporation at this amount, because to do so would be to exempt it to the extent of its indebtedness. To ascertain, therefore, what would be the aggregate value of its shares of stock, if the corporation were free from debt, it is necessary to add the value of the debt to the value of the shares of stock. If the corporation is, in the given case, indebted $150,000, the shares of stock will be worth nothing, but the value of the debt will be $150,000—which is the value of that from which payment can be enforced; and so, if the corporation is indebted in any greater sum, the value of the debt will still be only $150,000.

"If these assumptions were entirely accurate, there could be no question of the accuracy of the valuations determined by the board. But it is insisted that the market values of the shares of stock are sometimes based upon artificial and fictitious valuations, produced by stock gambling and dishonest speculations. This may be conceded to be true, and still it will not follow that they, therefore, can not be valued for taxation, or their market value may not be taken as a sufficiently accurate approximate value for that purpose. It has always been supposed that a fair test of the value of an article is, what it will sell for, and we are unable to perceive how a more accurate test of value can be ascertained. The fact that the market value is fluctuating makes such a test less accurate than it would otherwise be; still it must, of necessity, be deemed a sufficient approximation of actual value for all practical purposes. So far as we are advised, it has never been questioned but

that shares of stock may be assessed and taxed, on the basis of their market values. It is difficult to conceive why, if this may be done, as against the shareholders, the aggregate market values of the shares of stock may not be assumed as an equally fair expression of all taxable values, tangible and intangible, belonging to the corporation, since it is not claimed that the shares have any value independent of the interest they represent in the franchise and other property of the corporation. Live stock, grain, etc., may be assessed for taxation on a valuation based on their market values, yet it is as well known that such values are frequently affected by gambling speculations, as it is that shares of stock are thus affected. It is obvious that if no property can be assessed for taxation except where it has a permanent market value, based upon an infallible standard of actual, intrinsic value, the sooner the present system for raising revenue is abandoned the better it will be for the State, for it is scarcely possible that any considerable part of the property in the State can be so valued."

[*Illinois Tax Inj. Cases*, p. 25.

If the ascertained value of all the property or capital stock of the company, including the franchise, does not exceed the assessed value of the tangible property, then, in the application of this rule nothing would remain to be assessed under the title "capital stock." This is the explanation of the fact complained of by the appellees, that as to a large number of the weaker railroad corporations no assessment was made under the designation "capital stock."

[*Proceedings of State Board of Equalization for* 1874, p. 80.

It thus appears, that when the board has before it accurate data to which to apply the rule, it only develops values when real values exist.

This mode of taxing corporations upon their capital stock has obtained and been upheld in other States.

Commonwealth v. *Hamilton Manufacturing Co.*, 12 Allen, 298.
Commonwealth v. *Lowell Gas Light Co.*, 12 Allen, 312.
Dwight v. *Mayor of Boston*, Id. 316.
Commonwealth v. *New England Slate and Tile Co.*, 13 Allen, 391.
Commonwealth v. *Cary Improvement Co.*, 98 Mass., 19.
Monroe Co. Savings Bank v. *Rochester*, 37 N. Y., 366.
Osborn v. *N. Y. and N. H. R. R. Co.*, 40 Conn. Rep., 491.

It appears, from the case last cited, that the statute of Connecticut requires the amount of the funded and floating debt of railroad corporations to be added to the market value of shares of stock, in order to determine the total value of the property and franchises of such corporations. As quoted in the opinion, the statute, after requiring the value of the stock and debt to be thus combined, contains this provision:

"Which valuation, so made and approved, or amended, by the Board of Equalization, shall be regarded as fixing the basis or measure of value of such railroad and horse railroad, their rights, franchises and property within this State, for purposes of taxation." [*Ibid.* p. 492.

In the recent case of *Bailey* v. *Clark* this Court said: "It is undoubtedly true, as stated by the Attorney General, that capital used in the business of banking is none the less so because it is borrowed. The mere fact that the money permanently invested in the business is borrowed, does not alter its character as capital." [7 *Chicago Legal News*, p. 339.

It was there conceded that borrowed capital permanently invested in the business of the banker was subject to taxation.

In the year 1870, the Governor of New York, in pursuance of a resolution adopted by the General Assembly, appointed a commission, consisting of David A. Wells, Edwin Dodge and George W. Cuyler, to revise the laws of the State for the assessment and collection of taxes, and to report the result of their labors to the General Assembly. The chairman of this commission has a national reputation as a statistician and student of political economy. In February, 1871, this commission accordingly made their report, and in respect to the assessment of railroad corporations, after discussing the mode of taxation which prevails in Massachusetts and Connecticut, make the following recommendation:

"The commissioners are of opinion that the interests of New York would be subserved if the State would follow the example of Massachusetts and Connecticut, and take the taxation of her railroad corporations exclusively under her control; authorizing the comptroller or other designated officer to assess annually at a given rate *the corporate franchise, at a valuation equal to the aggregate market value of its stocks and funded and floating debt*, less cash on hand; and that in consideration therefor the said corporations be exempt from all other taxation."

[*Report of Commissioners*, p. 105.

This mode of ascertaining the value of the corporate property and franchise is not, therefore, an invention of the General Assembly of Illinois. It finds a recognition in the legislation of other States, and has met the approval of the leading minds of the country who have made the subject of this vexed question of taxation an especial study.

Although the courts might think it expedient to adopt some other rule to ascertain the value of corporate property and franchises, if the duty of assessing property for purposes of taxation devolved upon the judicial department of the government, yet the rule adopted by the State Board of Equalization is certainly not in itself so unreasonable

and absurd as to justify the courts, in a collateral proceeding, to disregard the action of the tribunal whose duty and province it was to make the assessment.

The Board of Equalization had jurisdiction of the subject, and jurisdiction being established, a tax founded upon the assessment has all the force and vigor of a judicial sentence, importing absolute verity, notwithstanding the assessors may have erred in their judgment.

The People v. *Halsey*, 53 Barb. 548.
Genesee Bank v. *Supervisors*, Id. p. 222.
Swift v. *City of Poughkeepsie*, 37 N. Y. 511.
Clinton School District's Appeal, 56 Pa. State (6 P. F. Smith) 315.

IV.

The Assessment upon which Taxes are Claimed to be due does not Appear to be Excessive.

Upon the facts as conceded by appellees, the property and franchises of the company were of sufficient value that, although the funded debt of the corporation was not less than $11,164,169.18, yet the shares of stock therein in the hands of its shareholders, amounting to $16,723,709.20, were above par in the market, so far as relates to the road in Illinois. [*Printed Record*, pp. 66, 71.

This clearly indicates that the value of the property and franchises of the Company must be over $27,000,000.

The tangible property was assessed at $7,873,897.

There was assessed under the designation "Capital Stock," $12,123,668; from which—upon the authority of a recent decision of the Supreme Court of Illinois—it is conceded there should be abated $3,240,300, by reason of the fact that the indebtedness of the leased roads was taken as a part of the debt of the principal corporation.

[*Ill. Tax Inj. Cases*, p. 44

This leaves an assessment or valuation under the designation "Capital Stock," of $8,683,368, which the State claims to be subject to taxation.

The total valuation of the tangible property and capital stock, including franchise, would therefore be $17,557,265.

He who seeks equity must do equity, and he who seeks to restrain the collection of a tax, a part of which is illegal, must pay so much of the tax as may be equitably due. [*Merrill* v. *Humphrey*, 24 Mich. 170.

In courts where injunctions are granted to restrain the collection of taxes illegally levied, it is the settled rule that if it appears that only a

part of the tax is illegal or unauthorized, the party seeking the injunction must show by his pleadings and proofs the precise portion of the tax which is illegal, in order that the court may so frame its decree as to require the payment of so much of the tax as is equitably due and only enjoin the collection of that part which is unjust.

The averments of the bill must be sufficiently certain and specific to furnish the means of giving the precise relief to which the party is equitably entitled, otherwise such relief will be refused.

Conway v. *Township Board*, 15 Mich., 263.
Palmer v. *Napoleon*, 16 Mich., 176.
Merrill v. *Humphrey*, Auditor-Gen., 24 Mich., 170.
Pillsbury v. *Auditor-General*, 26 Mich., 246–248.
O'Kane v. *Treat*, 25 Ill., 557–562.
Briscoe v. *Allison*, 43 Ill., 291, 296.
Hersey v. *Supervisors*, 16 Wis., 186.
Cheney v. *Jones*, 14 Fla. Rep. 587.
City of Lawrence v. *Killion*, 11 Kan., 499.
City of Ottawa v. *Barney*, 9 Kan., 296.
Savings and Loan Society v. *Austin*, 46 Cal., 415.

This is but an application of the maxim that "he who seeks equity must do equity."

The fact, therefore, that a part of the assessment under the designation "Capital Stock" is conceded to have been excessive, does not, in equity, constitute ground for restraining the collection of the entire tax.

It is said that all the property of the Company, except its franchise, was assessed as tangible property. The record does not sustain this statement.

1. It appears that the corporation owned perpetual leases of five other railroad companies in Illinois having extensive lines of road, with the right to operate the same and exercise their franchises in connection with its own road. [*Printed Record*, p. 7.] That the right of the corporation under these leases is of great value, is undisputed; but such value, whatever it may have been, was not included in the assessment of the tangible property.

2. The books containing the proceedings of the State Board of Equalization for the years 1873 and 1874, were produced in evidence, and by consent of parties, and in pursuance of the order of the Circuit Court, were transmitted to this Court in lieu of copies.

It thus appears that in the assessment of the "Railroad Track" the State Board did not take into consideration the value thereof arising from the fact that it had been graded, bridges and culverts built, and put in condition to receive the ties and iron.

It appears that the following resolution was adopted by the State Board:

"WHEREAS section 273 of the Revenue law provides that in all questions of doubt the Auditor shall give his opinion and advice as to the true intent and meaning of the law,

"*Resolved*, That the Auditor be requested to present to the Board, at 2:30 o'clock P. M., his opinion in writing, as to the proper manner of assessing railroad property, especially as to the right of this Board to embrace the value of grading and cost of construction in the assessment of railroad property denominated 'railroad track.'"

The following is the material part of the Auditor's response:

"The conclusion which I have reached is, that the law does not contemplate the assessing of the cost of construction, or grading, as any part of the property denominated 'railroad track,' in section 42 of the Revenue law; but that any value resulting from, or belonging to, such grading, can only be legally and equitably ascertained in the assessment of the capital stock of any railroad company."—[*Proceedings of State Board of Equalization for* 1873, pp. 44–148.

The majority of the committee of the board on assessment of railroad property made a report, including the estimate of the value of grading or improvements beneath the iron, etc. (*Ibid.* pp. 36–38.)

The minority of the same committee made a report to the board, excluding the value of such improvements from their consideration.

—[*Ibid.* pp. 39–41.

The board adopted and acted upon the minority report. [*Ibid.* p. 44.

The same board made the assessment in 1874, and pursued the same plan in respect to exclusion of the value of the grading and improvements of the road bed beneath the iron from their consideration in the assessment of the railroad track, under the supposition that it could be more fairly and justly reached in the assessment under the designation "capital stock."

It thus appears that very large values, which undoubtedly might with propriety have been assessed under the designation "railroad track," were in fact excluded from the assessment under that designation.—[*C. & N. W. R. Co.* v. *Lee Co.*, 44 Ill. 248.

The statute requires that the *assessed* value (not the actual value) of the tangible property should be deducted from the aggregate value of the capital stock and franchises of the corporation, for the purpose of assessment.—[*Rev. Stat. of Ill. of* 1874, p. 858, § 3; *Ante*, p. 4.

It will, therefore, frequently occur that when the tangible property is not assessed at its proper value, or when any portion thereof is, from

any cause, omitted from the assessment, the same will be included in the assessment of the capital stock.

Unless the assessment under the designation "capital stock" is sustained, these elements of value in the road bed, the value of the right of the principal company to use the franchises of its leased roads, and the value of its own franchise, will wholly escape taxation.

V.

THE DECISIONS OF THE SUPREME COURT OF A STATE AS TO THE PROPER CONSTRUCTION OF ITS REVENUE LAWS CONSTITUTE RULES OF DECISION IN THE FEDERAL COURTS.

We have the right to regard this proposition as the settled law of this Court. It has been repeatedly asserted and acted upon.

"It is not the province of this Court to interfere with the policy of the revenue laws of the States, nor with the interpretation given to them by their courts." [*Witherspoon* v. *Duncan*, 4 Wall., 217.

In the recent case of *Bailey et al.* v. *Pacific Railroad Company et al.*, reported in 7 Chicago Legal News, p. 265, this Court, after adverting to the fact that the Supreme Court of Missouri had decided the questions of law in dispute relative to the taxation of railroad corporations in that State, say:

"As it is the peculiar province of the highest court of a State to decide whether or not the method pursued in the assessment and collection of taxes is in conformity with the law of the State, this decision is controlling."

To the same effect is the entire current of authority bearing upon that class of questions.

Tappan v. *Merchants' Nat. Bank*, 19 Wall., 490–505.
Paine v. *Wright et al.*, 6 McLean C. C. Rep., 399–401.

And upon other questions, the general rule is, that in the construction of the statutes and Constitution of a State the Federal Courts are governed by the decisions of the State Courts.

Leffingwell v. *Warren*, 2 Black, 599.
Suydam v. *Williamson*, 24 Howard, 427.
McKeon v. *Delaney's Lessee*, 5 Cranch, 22.
Luther v. *Borden*, 7 Howard, 1.
Nathan v. *Sheldon*, *Ibid.*, 812.
Massingill v. *Down*, *Ibid.*, 767.
Van Ransellear v. *Kearney*, 11 Howard, 297.
Webster v. *Cooper*, 14 Howard, 514.

The only recognized exception to this rule is, where the State court has, by subsequent decisions, changed its former rulings, and in the *interim* rights have accrued in reliance upon such former decisions, which it would be in bad faith to hold void under the more recent decisions.

Gelpeck v. *City of Dubuque*, 1 Wall., 175.

Havemeyer v. *Iowa County*, 3 Wall., 294.

Lee County v. *Rogers*, 7 Wall., 194.

The City v. *Lawson*, 9 Wall., 477.

For the most cogent reasons should the construction which the State courts place upon their own revenue laws (involving no Federal questions) be received as authority in all other courts.

The power of taxation is inherent in every State. It is an attribute of sovereignty essential to its existence.

Cooley's Const. Limitations, p. 479.

McCulloch v. *Maryland*, 4 Wheat., 428.

Nathan v. *Louisiana*, 8 How., 73.

It was not the design of the framers of the Federal Constitution to transfer to any department of the national government the right to supervise or control the States in the interpretation, construction, or enforcement of the State Revenue Laws.

In number XXXII of the Federalist, the authorship of which is attributed to Alexander Hamilton, we find the following:

"Yet I am willing to allow, in its full extent, the justness of the reasoning which requires that the individual States should possess an independent and uncontrollable authority to raise their own revenues for the supply of their own wants. And making this concession, I affirm that (with the sole exception of duties on imports and exports) they would, under the plan of the convention, retain that authority in the most absolute and unqualified sense; and that an attempt on the part of the national government to abridge them in the exercise of it, would be a violent assumption of power unwarranted by any article or clause of its constitution."—[*The Federalist*, No. XXXII, p. 249.

If there is any class of questions upon which the decisions of the State courts should be received as *authority*, it must be that which pertains to the interpretation and enforcement of their own revenue laws.

Hitherto the Supreme Court of the United States has cheerfully acknowledged the principle so vigorously expressed by Hamilton, and has repeatedly held that it was not its province to interfere with the

policy of the revenue laws of the States, nor with the interpretation given to them by their courts.

Witherspoon v. *Duncan*, supra.

VI.

THE ASSESSMENT OF RAILROAD PROPERTY IS CONFIDED TO THE STATE BOARD OF EQUALIZATION; AND SO LONG AS THE BOARD KEEPS WITHIN ITS JURISDICTION, ITS ACTION CANNOT BE COLLATERALLY IMPEACHED FOR MERE ERROR IN JUDGMENT, BUT ONLY FOR FRAUD, ACCIDENT, OR MISTAKE.

In the case of *Commonwealth* v. *Cary Improvement Company*, the Supreme Court of Massachusetts say:

"The defendants complain that the valuation upon which the amount of tax is computed is excessive and unreasonable, and therefore that either the tax is entirely invalid, or the defendants are entitled to be relieved to the extent of the excess. The return made by the treasurer of the corporation stated the market value of the shares. This return, verified by information of actual sales of such shares, governed the tax commissioners in fixing the value of the aggregate capital stock upon which the tax was laid. It is not contended that there is any error in the tax, if the standard adopted by the commissioners is the correct and proper one by which to determine its amount. But the defendants contend that the value so computed is an artificial one, and greatly in excess of the real value of the entire property of the corporation, and that the commissioners erred in disregarding entirely the actual pecuniary condition of the corporation and the value of its real and personal property.

"The court are of opinion that in the estimate or computation of the value of the capital stock of the corporation, the judgment of the tax commissioners is not open to modification or revision by any other tribunal."—[98 *Mass. Rep.*, pp. 19–21.

The same principle has been repeatedly affirmed in New York. It is there held:

"The assessors are *quasi* judicial officers when acting within the sphere of their jurisdiction, and their assessments, when made, become judgments to be enforced by a warrant, in the nature of a special execution, to be issued by the supervisors of the county. The assessors are not subject to an action to review, modify, or reverse their judgments; nor to hold them to personal liability when acting within their jurisdiction. (*Barhyte* v. *Shepherd*, 35 N. Y. R., 238, and cases there cited.) Their judgment can be reviewed by action for fraud, mistake,

or other cause giving jurisdiction to courts of equity; but it is the parties affected by the judgment who must be brought into court to litigate, and not the judges."—[*Western R. R. Co.* v. *Nolan*, 48 New York, pp. 514–518.

The law is well settled, that assessors, in judging of the value of property, act in a *quasi* judicial capacity, and although they may err in judgment and assess it too high, this, of itself, will give a court of equity no jurisdiction to interfere or restrain the collection of the tax.

Porter v. *R., R. I. and St. L. R. R. Co.*, 76 Ill., p. 561.

Ill. Tax Inj. Cases, 32, 36.

Spencer and Gardner v. *The People*, 68 Ill., 512.

Weaver v. *Devendorff*, 3 Denio, 117.

Albany and West Stockbridge R. R. Co. v. *Town of Canaan*, 16 Barb., 244.

Gilpatrick v. *Inhabitants of Saco*, 57 Me., 277.

Salmond v. *Hanover*, 13 Allen, 119.

Osborn v. *Danvers*, 6 Pick., 98.

Howe v. *Boston*, 9 Cushing, 274.

Where no appeal is given, the courts cannot revise the judgment of the tax officers.

Stewart v. *Maple*, 70 Pa. State Rep., 221.

Clinton School Dist. Appeal, 56 Ib., 315.

So, in *Republic Life Ins. Co.* v. *Pollak*, the Supreme Court of Illinois say:

"It is urged that the Board of Equalization has overvalued the property assessed, and adopted a false rule for ascertaining such value. Even if it were true that there was too great a value placed on this property, counsel mistake the power of the Court to afford relief for that reason. Our Constitution, article 9, section 1, provides that the General Assembly shall provide such revenue as may be needed, by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property, such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise. Thus it will be seen that all power to fix a valuation is taken from each of the departments of the government. It is unmistakably vested in the persons elected under the requirements of the statute, and it can only be fixed by them, and not otherwise. The legislative branch of government could not exercise this power, nor could the executive, because the constitution has not only vested it in the

persons elected, as directed by the General Assembly, but all other persons, bodies, departments, or such bodies combined, are expressly prohibited from performing such duty.

"Nor is there any power, expressed or implied, by which the courts can fix a valuation, or review the action of the assessors. They are invested with the sole power, and we are aware of no authority to review their action. The law has not—nor can it, in view of this constitutional provision—empower the courts to fix the valuation of property for taxation. We regard no proposition clearer. And if the courts may hear evidence, and change the valuation fixed by the officers elected under the law to perform that duty, then it is the courts, who are not elected or appointed for the purpose, who fix the value, and that would be to make the valuation otherwise than is *peremptorily* required by the constitution. For the courts to hear evidence and change the valuation fixed by the assessors, would be in direct and palpable violation of the constitution. When those officers have acted it is final, and the taxpayer must submit to the action of the officer who is clothed with the sole power to make the estimate of the value, unless he can show it was fraudulently made, or that the property has been assessed not liable to taxation, or the Legislature has disregarded or transcended the principles of equality, or where a tax has been levied when not authorized by law." [*Illinois Tax Inj. Cases*, p. 36.

In the case of *Lincoln* v. *City of Worcester*, 8 Cushing, 55, at the conclusion of the opinion of the Supreme Court of Massachusetts, delivered by SHAW, Ch. J., it is said: "If such an action [to recover taxes paid upon an erroneous assessment or overvaluation,] could be maintained, it would, in effect, be to transfer the duty and business of forming a valuation, and assessing and levying taxes, from the domestic tribunal to which the law has committed it, to a court of justice, settling facts on evidence, by a jury, and with very inadequate means for the performance of that duty to the satisfaction of any body. Deciding, therefore, that such action will not lie, is not deciding upon a mere question of form of remedy, where a real grievance is shown, but it results from a view of the fundamental principles on which the whole system of public taxation is founded." [*Ibid.* p. 66.

"The assessor is the officer who has been provided by the Legislature for fixing the valuation of property for the purposes of taxation.

"No appeal to any court is provided from the assessor's judgment in fixing the value of property for taxation, nor has any express authority been conferred upon a court to revise such valuation, or to correct an assessment, or order a new one, or to make a rebate of any tax.

"And we are of opinion that the power does not belong to any court to revise the assessment made by an assessor, and change or set aside any valuation of property made by him, where his judgment has been honestly exercised, and upon a right basis. To do so, would seem to be to arrogate the power of ascertaining the value of property for taxation, which ascertainment of value, the constitution declares, shall be by some person or persons designated by the General Assembly, and not otherwise."

Spencer and Gardner v. *The People*, 68 Ill., 512.

Elliott v. *City of Chicago*, 48 Ill., 293.

Jenks et al. v. *City of Chicago*, Id., 296.

The assessment of property for taxation, made by assessors acting within the scope of their jurisdiction, stands upon the same basis as the judgment of a court of competent jurisdiction.

Neither can be questioned, collaterally, for mere error in judgment, but only upon the ground of fraud, or the existence of such facts as bring the case under some acknowledged head of equity jurisdiction.

Susquehanna Bank v. *Board of Supervisors*, 25 N. Y., 312.

VII.

Conclusion.

The decree of the Court below cannot be sustained, unless the Federal Courts may rightfully disregard the decisions of the highest Court of a State in the interpretation of its own constitution and statutes providing for the collection of its revenue, where no Federal question is raised. There is nothing in the record upon which to base the proposition that the Revenue Law of Illinois impairs the obligation of any contract between the State and the Chicago, Burlington and Quincy Railway Company; and we shall refrain from the discussion of any such question.

To sustain this decree upon the mere ground of a supposed overvaluation, will virtually place the Federal Courts in the attitude of the assessors of property for State taxation. This is a duty and power which the State Courts cannot, under the constitution, assume; and for stronger reasons, we submit that it is not within the province of the Federal Courts to undertake the discharge of any such function. "Courts of Equity, and particularly the Federal Courts, sitting in equity in the States, will exercise great caution in interfering with the

collection of revenues by the States, or their public or municipal agencies. There must be a plain case of injury, and a plain case of equitable jurisdiction, and want of adequate remedy at law, to justify the chancellor in arresting, by injunction, the ordinary processes of collection under the revenue laws."

Railroad Company v. *County Treasurer*, 2 Dillon C. C. Rep., 281.

Dows v. *City of Chicago*, 11 Wall., 108.

JAMES K. EDSALL,
Attorney-General of Illinois, for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES,

No. 708,

OCTOBER TERM, A. D., 1875.

HERMAN LIEB ET AL., APPELLANTS,

—VS.—

HENRY P. KIDDER AND DANIEL P. STONE, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT FOR APPELLEES.

O. H. BROWNING,

FOR APPELLEES.

CHICAGO:

BEACH, BARNARD & CO., LEGAL PRINTERS, 98 RANDOLPH STREET.

1876.

IN THE

SUPREME COURT OF THE UNITED STATES,

No. 703,

OCTOBER TERM, A. D., 1875.

HERMAN LIEB ET AL., APPELLANTS,

—VS.—

HENRY P. KIDDER AND DANIEL P. STONE, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
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1876.

STATEMENT OF CASE.

Kidder, one of appellees, is a stockholder in the Chicago, Burlington and Quincy Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Illinois, and owning and operating a railroad in said State; and both appellees are owners of bonds of said company, secured by mortgage upon the road and all its appurtenances, and the franchises of the company.

The State and county authorities of Illinois, assessed the tangible property of the company for taxation, for the year 1874, at the sum of $7,837,897, the tax upon which assessment has been fully paid by the company.

The State Board of Equalization assessed said company for taxation for said year in the further sum of $12,123,668, as and for and under the name and description of capital stock tax.

The appellees filed their bill in chancery, in the court below, to enjoin the county clerks of twenty-one counties in Illinois, through which the road runs, from extending the tax upon said capital stock assessment upon the books of the collectors, and from delivering the books, with the taxes extended thereon, to the collectors of taxes for such counties; to enjoin the collectors of said counties from collecting the tax; and to enjoin the company from the payment thereof.

The road was built by different companies, each company acting under a separate charter, which said companies, charters and roads were, afterwards, by authority of the

laws of Illinois, consolidated under the name of the Chicago, Burlington and Quincy Railroad Company, whereby the several roads became the property, and subject to the management of the one company.

The allegations of the bill, material to the present controversy, are, that to enable the company to build and equip its road, it issued certificates of capital stock, which it sold to persons and corporations in Illinois and other States, and in foreign countries; and that, on the first day of May, 1874, (that being the date to which the assessments relate,) the aggregate amount of certificates of stock, which had been so issued and sold, was $16,723,709.20; the entire proceeds of which had been expended in the acquisition of the right of way; in grading and building the road, and bridges and culverts; in the erection of depots, freight houses, machine shops, &c.; and in the purchase of engines, cars, tools, and other property necessary to be owned and used in the construction and operation of the road. That the road has been in operation about 20 years, and that the wear and tear and natural decay and deterioration thereof, and of its machinery, rolling stock, &c., have been such that the company has been compelled, from time to time, to repair and replace the same; and, in addition to other expenses, has been obliged to, and has, replaced the ties as many as three times, and the rails still more frequently. That, owing to the rapid development of the country, and the great increase of business after the road was built, the company was compelled to make other heavy expenditures to meet the business demands upon it; to do which it was obliged to, and did, borrow large sums of money, and that on the 1st of May, 1874, the indebtedness thus incurred, and for which it had issued its bonds, amounted to the sum of $11,164,169.18, which was secured by mortgage on its road and franchises, and the whole of which was expended by the company in building double track over portions of the road; in replacing ties and rails

upon the whole of the road; in substituting steel for iron rails, and in fencing and ballasting; in enlarging and improving its depots, freight houses, machine shops, &c., and in replacing such as had been destroyed by fire; in rebuilding bridges and culverts; in purchasing a large additional number of locomotives, and freight and passenger cars, and in doing other things necessary for the accommodation of the public. That the road and appurtanences, and tangible property connected therewith, represents the whole amount of the bonded indebtedness, and the whole amount of capital stock which the company had sold; and that besides its road, and the tangible property connected therewith, it did not, on the 1st of May, 1874, own anything whatever.

That prior to the first of May, 1874, the company had become the lessee of seven other railroads in the State of Illinois, and one in the State of Iowa, which said eight leased roads had an aggregate bonded indebtedness of $6,756,000, the bonds for which were held and owned by persons and corporations in Illinois, and other States, and in foreign countries, and none of which were held and owned by the Chicago, Burlington and Quincy Railroad Company, and all of which had been issued and negotiated prior to the time at which the Chicago, Burlington and Quincy Company became the lessee of said roads. That by virtue of its lease of said roads, and its possession and use thereof, the Chicago, Burlington and Quincy Company was legally and justly subject to be assessed for taxation on said roads and appurtenances, but was in no way bound for the bonded indebtedness thereof. That in conformity with the law of Illinois, the Chicago, Burlington & Quincy Company, on or about the 1st of May, 1874, caused to be filed in the offices of the clerks of the counties of Cook, DuPage, Kane, Kendall, DeKalb, Lee, LaSalle, Bureau, Henry, Knox, Warren, Henderson, Fulton, McDonough, Hancock, Adams, Stark, Peoria, Schuyler, Mercer and

Whiteside, being the counties through which the Chicago, Burlington and Quincy, and the leased roads, or some of them ran, schedules, containing, among other things, statements of the property of the said Chicago, Burlington and Quincy Company, in each of said counties; and also filed a report of its property in the State of Illinois, with the auditor of public accounts of said State. That on or about the 1st of May, 1874, the entire property of the company situated in the above named counties, except the property denominated in the revenue law, "railway track," and "rolling stock," was assessed for taxation by the assessors of the different townships in said counties, wherein the company had any property subject to taxation, which assessments aggregated $687,645, and covered and included all the property belonging to the company in the State of Illinois, except that denominated "railroad track," and "rolling stock," and which was a fair valuation of the company's property as compared with the valuation of other property in said counties, and State for the year 1874. That the State Board of Equalization, at its annual meeting in 1874, assessed the property of the company denominated "railroad track," and "rolling stock," at the aggregate sum of $7,186,897, which was distributed among the foregoing counties, making an aggregate assessment against the company, upon all its property, in the State of Illinois, $7,873,897, the taxes upon all which, with the exception of $204,501.60 of the amount destributed to Kane county, and $83,961 of the amount distributed to Knox county, the complainants are ready and willing, and offer to pay.

(The company has, since, actually paid the taxes upon all its tangible property, assessed against it, as above stated. It has never, at any time, resisted the collection of the taxes upon its *property*, but has always paid them promptly, when due.)

That the company was doubly assessed in Kane County,

to the amount of $204,501.60, and in the county of Knox to the amount of $83,961, and is willing to pay the taxes upon one assessment, but not upon both. (This was waived upon the hearing, and the taxes upon these double assessments have been paid.)

That the assessments above stated, made by the local assessors and by the State Board of Equalization, cover and include all property, of every kind and character, owned or possessed by the company in the State of Illinois, except its franchises, which cannot be assessed for taxation, by valuation, as property. That, after all the property of every kind and character, owned by the company in the State of Illinois, had been assessed as above stated, said board proceeded to, and did, make a further assessment against said company, to the amount of $12,123,668, under the designation of, and as, and for, capital stock, which is an amount in excess of all the property owned and possessed by the company. That this assessment was made by the State Board of Equalization, by adding to the market value of the *shares of stock which were held and owned by the individual stockholders* of the Chicago, Burlington and Quincy Railroad Company, the bonded indebtedness of said company, and the bonded indebtedness of the railroad companies in Illinois, whose roads had been leased by the Chicago, Burlington and Quincy Railroad Company; and, after equalizing the gross amount thereof, with the other property of the State, at $19,997,565, deducted therefrom the sum of $7,873,897, the assessed value of all the property owned by the company, leaving the sum of $12,123,668 upon which the State Board assessed the company for taxation for capital stock, in addition to the assessment upon its property.

That before making said assessment, said State Board of Equalization adopted the following resolution and rules, by which it professed to be governed, in making the assessment, namely:

"WHEREAS, The fourth clause of Sec. 3, of an act 'for "'the assessment of property, and for the levy and col- "'lection of taxes,' approved March 30th, 1872, in force "July 1st, 1872, provides as follows:

"Sec. III. 4th. The capital stock of all companies and "associations, now or hereafter created under the laws of "this State, shall be so valued by the State Board of Equal- "ization, as to ascertain and determine, respectively, the "fair cash value of such capital stock, including the fran- "chise, over and above assessed value of the tangible "property of such company or association.

"Said board shall adopt such rules and principles for as- "certaining the fair cash value of such capital stock, as to "it may seem equitable and just; and such rules and prin- "ciples, when so adopted, if not inconsistent with this act, "shall be as binding, and of the same effect as if con- "tained in this act, subject, however, to such change, al- "teration, or amendment, as may be found, from time to "time, to be necessary by said board; provided, that in "all cases where the tangible property or capital stock of "any company or association is assessed under this act, "the shares of capital stock of any such company or as- "sociation, shall not be assessed or taxed in this State. This "clause shall not apply to the capital stock, or shares of "capital stock of banks, organized under the general bank- "ing laws of this State.

"Therefore, be it

"*Resolved*, That for the purpose of ascertaining the "fair cash value of the capital stock, including the fran- "chise, of all companies and associations, now or hereafter "created under the laws of this State, and for the assess- "ment of the same, or so much thereof as may be found "to be in excess of the assessed or equalized value of the "tangible property of such companies and associations, re- "spectively,

"We the State Board of Equalization, hereby adopt the "following rules and principles, viz:

"*First.* The market or fair cash value of the shares of "capital stock, and the market or fair cash value of the "debt, (excluding from such debt the debt for current ex- "penses), shall be combined or added together, and the "aggregate amount so ascertained shall be taken and held "to be the fair cash value of the capital stock, including "the franchise, respectively, of such companies and asso- "ciations.

"*Second.* From the aggregate amount, ascertained as "aforesaid, there shall be deducted the aggregate amount "of the equalized or assessed valuation of all the tangible "property, respectively, of such companies and associa- "tions, (such equalized or assessed valuation being taken, "in each case, as the same may be determined by the equal- "ization or assessment of property by this board,) and the "amount remaining in each case, if any, shall be taken "and held to be the amount and fair cash value of the "capital stock, including the franchise, which this board "is required by law to assess, respectively, against com- "panies and associations now or hereafter created under "the laws of the State."

That the assessment, so made against the company, upon the shares of stock and bonded indebtedness of the Chicago, Burlington and Quincy Company, and the bonded indebtedness of the leased roads, none of which stock or bonds were the property of the Chicago, Burlington and Quincy Company, was without authority of law, and illegal.

That when the State Board of Equalization was in session, the Chicago, Burlington and Quincy Railroad Company appeared before it by attorney, and resisted the unjust action of the board in making an assessment against said company for capital stock which it did not own, and

against including in the estimate of such capital stock the indebtedness of said railroad companies; and represented to the State Board the injustice of doing so; and informed the board that said company owned none of the shares of the capital stock, and no part of the bonded indebtedness so assessed against it, and that everything which said company owned, except its franchises, was its tangible property, which had already been assessed against it at the sum of $7,873,897.

That no law has been passed by the State of Illinois for the taxation of railroad corporations, for the ownership and use of franchises and privileges, in the manner in which, alone, they can and must be taxed, if taxed at all, under the constitution of Illinois.

That the constitution, Sec. 1, Art. 9, provides that "the "General Assembly shall provide such revenues as shall "be needful, by levying a tax by valuation, so that every "person and corporation shall pay a tax in proportion to "the valuation of his, her or its property," * * * * and that "the General Assembly shall have power to tax ped- "dlers, merchants, commission merchants, showmen, jug- "glers, inn-keepers, grocery keepers, liquor dealers, toll "bridges, ferries, insurance, telegraph and express in- "terests or business, venders of patents, and persons or "corporations owning or using franchises and privileges, "in such manner as it shall, from time to time direct, by "general law, uniform as to the class upon which it op- "erates."

That if any law has been passed authorizing the taxation of railroad corporations for the use of franchises, such law, as it has been construed and executed by the State Board, is not of uniform operation ; and that if the assessment made by the board against the company, as and for capital stock, is claimed to be an assessment for the use of its franchise by the company, that then, instead of being

uniform in its operation, the law is partial, irregular, unjust and oppressive, and imposes taxes on this company, out of all proportion, greater than on other railroad corporations in the State for the use of similar and equally valuable franchises and privileges.

That by an express provision of its charter, the company was authorized to establish such rates of toll, for the conveyance of persons and property upon its road, as the directors might, from time to time, by their by-laws, determine, and to levy and collect the same for the use of the company. That said company was also authorized by its charter to negotiate and sell its bonds, at such times and places, either within or without the State of Illinois, and at such rates, and for such prices, as in the opinion of the directors would best advance the interests of the company, and to borrow money on the credit of the company, and to execute bonds therefor, with interest coupons thereto annexed, and to secure the payment of the same by mortgage, or deed of trust, on the whole, or any part of the road, property and income of the company then existing, or thereafter to be acquired; with the privilege of converting such bonds into capital stock.

That there are twenty-two railroad companies existing and doing business in the State of Illinois, under charters substantially like that of the Chicago, Burlington and Quincy Railroad Company, the franchises of each of which companies is of equal value with the franchise of the Chicago, Burlington and Quincy Company, each of which companies owns a railroad which is in operation in the State of Illinois; and that the State Board of Equalization made no assessment against said companies, or any of them, for their franchises, nor on account of the ownership, or use of such franchises, nor for capital stock and franchises, nor for capital stock or franchises.

That there are fifty-eight railroad companies in the State

of Illinois, owning railroads, which are in operation under charters substantially like the charter of the Chicago, Burlington and Quincy Company, and the franchises of each of which are of equal value with the franchises of the Chicago, Burlington and Quincy Company, and that of the whole amount assessed by the State Board of Equalization against all the said fifty-eight companies upon their capital stock or franchises, or capital stock and franchises, whichever it may be, largely more than one-third is assessed against the Chicago, Burlington and Quincy Company alone; and that more than twenty-four per cent. of the entire railroad tax of the State is assessed against the Chicago, Burlington and Quincy Company alone.

That the State Board of Equalization, in making the assessment against the Chicago, Burlington and Quincy Company, intentionally diregarded the law, and the rules which it had adopted for its own government and guidance, with the purpose and design of compelling the Chicago, Burlington and Quincy Company to pay an amount of tax largely out of proportion to the value of its property, and greatly in excess of the proportional taxation of other railroad companies in Illinois.

That the act of the Illinois Legislature, under which the assessments were made against the company, is repugnant to the constitution of Illinois, which requires that all taxes shall be uniform as to the class upon which imposed, and that no law impairing the obligation of contracts shall be passed; and is also repugnant to the constitution of the United States.

That on the 5th of January, 1858, the complainant, Daniel P. Stone, became the owner and holder of thirty of the bonds of the Chicago, Burlington and Quincy Railroad Company of the par value of one thousand dollars each, payable January 1st, 1883, with interest at eight per cent., payable semi-annually, and that he has ever

since been, and is now, the owner and holder of said bonds.

That the complainant, Henry P. Kidder, is the owner of one hundred of like bonds of the said company, of one thousand dollars each, and of one hundred shares of the stock of said company, of one hundred dollars each; and that, as soon as it came to the knowledge of said complainants that the State Board of Equalization had so illegally and unjustly assessed said company for taxation, for the purpose of protecting his interests in said company, he, the said Kidder, made a written application to the company, requesting it to take the necessary steps to resist and enjoin the collection of the taxes upon such assessment, which the company refused to do, admitting, at the same time, that the assessment was illegal, unjust, and not binding on the company.

The charter of the company, and the proceedings of the Board of Equalization are made exhibits with the bill.

On this bill a temporary injunction was granted against the collection of taxes upon the assessments complained of.

THE ANSWER.

Admits the building of the roads under the charters, and that the companies and roads were consolidated under the name of the Chicago, Burlington and Quincy Railroad Company, as stated in the bill.

States that defendants have no knowledge of the amount of capital stock and bonded indebtedness of the company, except from averments in the bill, and the returns made by the company to the auditor of public accounts, dated and sworn to August 10, 1874, and filed in the auditor's office, August 11, 1874.

That it appears from said returns that the total amount of capital stock subscribed and paid up, including roads in Illinois and Iowa, owned and leased in perpetuity, was $26,431,062.76.

That the proportion paid up in Illinois was $18,652,910, and on the roads in Iowa, $7,773,152.76, and that all the stock was of par value.

That said report stated the bonded indebtedness of the company at $16,404,669.18.

Admits that the entire proceeds of the stock and bonds have been expended in the construction, enlargement and improvement of the road, and in increasing the facilities for business.

That the Chicago, Burlington and Quincy Company became the lessee of the other roads, as stated in the bill, and had the right to operate them, and use their franchises.

Admits the making and filing the returns of the assessment and equalization of taxes, but denies that there were double assessments.

Denies that in the assessment of "railroad track," or "right of way," the State Board of Equalization took into consideration the grading of the track, the bridges and culverts, and the preparation of the track to receive the ties and iron, but excluded them, for assessment under the designation of capital stock; but admits that, with this exception, all the tangible property of the company was assessed by the State Board of Equalization, and by the local assessors, respectively; and that the property assessed by the local assessors was equalized by the State Board, and that the aggregate amount of assessment against the company for taxation upon its tangible property was $7,873,897.

Admits that after the tangible property had been so as-

sessed, the State Board of Equalization assessed the company in the further sum of $12,123,668, as and for its capital stock, including its franchises, which assessment was made under the name and description of an assessment for capital stock, and that there was no separate assessment of the franchises of the company.

Admits that the company, by its attorney, appeared before the State Board of Equalization, and informed the Board that all the property which the company owned subject to taxation was its road and appurtenances and equipments, which had already been assessed against the company ; and protested against any further assessment.

Admits that, in making the assessment, the State Board acted upon the rule stated in the bill, *and took into consideration the bonded debt of the company, as reported by it to the auditor, and the market value of the shares of stock as the same was valued in the hands of the shareholders*, and that the aggregate equalized assessment against the company, under the description of capital stock, was $12,163,668, which, when added to the assessment upon the tangible property, made a total assessment against the company for taxation in 1874, of $19,997,565.

Denies that the State Board willfully and intentionally disregarded the law and the rules which it had adopted, in making the assessment.

Admits that no capital stock tax was assessed against the companies named in the bill as not assessed for their franchises, but says it was because the total assessed value of their capital stock, including their franchises, did not exceed the assessed value of their tangible property respectively.

Admits that complainants are citizens of Massachusetts, and the owners of bonds and stock as stated.

Admits that the number of miles of road operated in the State by the Chicago, Burlington and Quincy Company, and by other companies, and the amount of capital stock assessment against them, are truly stated in the bill.

Admits that the State Board had before it the original report of the company, and the supplemental reports attached to the bill as exhibits B and C, and that it changed the total value of the shares of capital stock computed against the company, in accordance with the statement in exhibit B, but disregarded the statement in exhibit C, in relation to $5,540,500 of the amount of indebtedness, and included that indebtedness, less 40 per cent., in the amount of indebtedness considered by the Board in making the assessment against the company for capital stock and franchises.

Admits that complainant Kidder requested the company to resist the collection of taxes on the assessment complained of, and that the company refused to do so.

Denies the equity of the bill, and asks for the same benefit from the answer to which defendants would be entitled on demurrer to bill.

GENERAL REPLICATION TO THE FOREGOING ANSWER.

THE CASE

was heard upon bill and exhibits filed therewith, answer and exhibits, replication, deposition of A. T. Hall, and stipulation of the parties; and a decree was entered making the injunction perpetual against the collection of the "capital stock" tax; but as the complainants withdrew their objections to what was charged in the bill to be a double assessment upon tangible property in the counties

of Kane and Knox, the injunction against the collection of the taxes thereon was dissolved.

From this decree all the defendants, except the Chicago, Burlington and Quincy Company, appealed, the company refusing to join therein.

BRIEF.

I.

The assessment against the Chicago, Burlington and Quincy Company for capital stock is illegal and void under the first clause of section 1, Article 9 of the Constitution of Illinois.

First. Because the law under which the assessment was made is unconstitutional.

Second. Because, if the law shall be held to be constitutional, the assessment, as made, was not authorized by the law.

Authorities upon the first point:

Solamons v. *Laing*, 14 Jurist for December, 1850.
Dodge v. *Woolsey*, 18 How., 343.
Van Allen v. *The Assessors*, 3 Wall., 583–4.
Bradley v. *The People*, 4 Wall., 459.
Bank v. *The Commonwealth*, 9 Wall., 359.
Austin v. *Board of Aldermen of City of Boston*, 14 Allen, 362.
Ang. & Am. on Corp., § 558, N. 1.
Brightwell v. *Mallory*, 10 Yerg., 196.
State v. *Franklin Bank*, 10 Ohio, 90, 97.
Redf. Am. Railw. Cases, 500, 507, 568, 510.
State v. *Thomas*, 2 Dutch., 184.

Constitution of Illinois, § 1, Art. 9; § 9, Art. 11.
Railroad Co. v. *Penna.*, 15 Wall., 300, 320.
The State v. *Branin*, 3 Zab., 500.
Smith v. *Burley*, 9 N. H., 428.

Authorities on second point:

Porter v. *R., R. I. & St. L. R. W. Co.*, Chicago Legal News, June 27th, 1874.
The C., B. & Q. R. R. Co. v. *Cole et als.*, Chicago Legal News, July 3d, 1875.
Bank of Chemung v. *City of Elmira*, 53 N. Y., 52.

II.

The assessment cannot be sustained as a tax upon the franchise of the corporation under the second clause of section 1, Article 9, of the Constitution of Illinois.

First. Because the General Assembly has passed no law, uniform as to the class upon which it operates, directing the manner in which persons and corporations shall be taxed for the ownership or use of franchises and privileges.

Second. Because the State Board of Equalization disregarded and violated the rule which it had adopted, and by which it had resolved to be governed, in making the assessment.

Third. It cannot be sustained as a franchise tax, because the assessment was not, in fact, for or on account of franchises and privileges.

Fourth. Because, in making it, the State board totally disregarded the uniformity and equality of assessment required by the constitution.

Authorities:

Redf. R. W. Cases, 500.
United R. R. & Canal Co. v. *Comm'r*, 8 Vroom, 247–8.
Moore v. *Chicago*, 60 Ills., 243.
The C., B. & Q. R. R. Co. v. *Cole et als.*, in Chicago Legal News, July 3, 1875.
Knowlton v. *Supervisors*, 9 Wis., 414.
Weeks v. *Milwaukee*, 10 Wis., 242.
Hersey v. *Board of Supervisors*, 16 Wis., 186.
Henry v. *Chester*, 15 Vt., 460.
Brewer Brick Co. v. *Inhabitants of Brewer*, 62 Maine, 74–5.
Portland Bank v. *Apthorp*, 12 Mass., 252.
Commonwealth v. *People's Savings Bank*, 5 Allen, 431.
Oliver v. *Washington Mills*, 11 Allen, 268.
Bureau County v. *C., B. & Q. R. R. Co.*, 44 Ills., 238.

ARGUMENT.

Since the rendition of the decree by the court below in this case, the Supreme Court of Illinois has decided the case of the *Chicago, Burlington and Quincy Railroad Company* v. *Cole et als.*, not yet reported, but published in the Chicago Legal News July 3, 1875. If that decision be accepted by this court as authority, then the decree in the case now in hearing must be affirmed; for every fact and every question presented in that case are present in this, with several additional facts and questions which have not been before the courts of Illinois, and which are not less fatal to the assessment complained of than those which have been passed upon by the Supreme Court of that State.

In 1873, the Chicago, Burlington and Quincy Railroad Company filed a bill in chancery in each of the counties through which its road runs, to enjoin the collection of what is called the capital stock tax, assessed against it by the State Board of Equalization for that year, and which had been distributed among the several counties for collection. There were twenty-one of these bills. Temporary injunctions were obtained upon them all. Most of them are still pending in the circuit courts.

In DuPage County a demurrer was filed to the bill; the demurrer sustained; the injunction dissolved; the bill dismissed, and an appeal taken by the company to the Supreme Court of the State; and a decision given by that court reversing the decree of the court below, for reasons which I will give in the language of the court by extracting from the opinion.

The court said: "The bill before us charges that the "Board of Equalization assessed the capital stock, including the franchise of appellant, beyond their actual value; "that, in making this assessment, they added to what "they determined the value of its capital stock, not "only the indebtedness of appellant, but also the indebtedness of six other railroad companies of which it was "lessee, one of which lies entirely without the State of Illinois, for the payment of none of which is appellant responsible, nor is it interested therein as owner. The "amount of this indebtedness is alleged to be $6,756,000.

"If, as it must be, to be sustained, the rule adopted by "the Board of Equalization, by which to be governed in "making this class of assessments, may be regarded as the "honest expression of the judgment of the majority of the "board, then it is plain this assessment, because in violation of that rule, and consistent with no other reasonable "theory of valuation, cannot be the honest judgment of a

"majority of that board. It is an arbitrary and unreason-
"able valuation.

"Whenever the board undertakes to go beyond its
"jurisdiction, or to fix valuations through prejudice, or a
"reckless disregard of duty, in opposition to what must
"necessarily be the judgment of all persons of reflection,
"it is the duty of the courts to interfere, and protect tax
"payers against the consequences of its acts."

The court pronounced the assessment illegal and void.

The bill now before the court was filed to enjoin the collection of the capital stock tax, assessed in the same way, against the same company for 1874, and embraces all the counties which were covered by the bills filed in the State courts in 1873. Every objection which was urged against the assessment in 1873 is present here, with many additional acts of oppression, of violation of law, and of "reckless disregard of duty" by the State Board of Equalization, which did not exist in the case before the Supreme Court of Illinois.

It will be our endeavor to show that the injunction in this case should be sustained, because, in the language of the opinion referred to, the State Board of Equalization took, as the basis of this assessment, the indebtedness of other railroad companies; because the assessment was made in "violation of the rule" adopted by the board; because it was "an arbitrary and unreasonable valuation"; because the board, in making it, went "beyond its jurisdiction"; and because it fixed the valuations "through prejudice, or a reckless disregard of duty."

We shall also endeavor to show that the assessment now complained of is null and void under the constitution and laws of Illinois for other sufficient reasons, which did not exist in the case of *The Chicago, Burlington and Quincy Railroad Company* v. *Cole*, and which have not been before, or adjudicated by the courts of Illinois.

Another contention on the part of the appellants is, that when the charter contract between the State and the Chicago, Burlington and Quincy Railroad Company was entered into, the constitution of Illinois guaranteed to the company equality and uniformity of taxation with other corporations and with the citizens; that this assessment disregards both equality and uniformity, to the injury and oppression of appellants; and that it therefore, and thereby impairs the obligation of the charter contracts and violates the constitution of the United States.

I shall confine myself mainly to a consideration of the questions growing out of the constitution and laws of Illinois, leaving those arising under the Federal constitution to rest upon the argument of my able associate counsel, Mr. Dexter, whose argument is on file.

Section one, Article nine, of the Constitution of Illinois, is as follows:

"The General Assembly shall provide such revenue as "may be needful by levying a tax, by valuation, so that "every person and corporation shall pay a tax in propor- "tion to the valuation of his, her or its property—such "value to be ascertained by some person or persons to be "elected or appointed in such manner as the General "Assembly shall direct and not otherwise; but the General "Assembly shall have power to tax peddlers, auctioneers, "brokers, hawkers, merchants, commission merchants, "showmen, jugglers, innkeepers, grocery-keepers, liquor "dealers, toll bridges, ferries, insurance, telegraph and "express interests or business, venders of patents, *and* "*persons or corporations owning or using franchises and* "*privileges, in such manner as it shall, from time to time,* "*direct by general law, uniform as to the class upon which* "*it operates.*"

The Chicago, Burlington and Quincy Railroad passes through twenty-one counties in Illinois, in all of which it

has property subject to assessment and taxation, in common with the other property in such counties, and upon the same basis, and according to the same rules and principles which govern the assessment and taxation of the property of individuals; so that the company shall pay a tax in proportion to the value of its property; such value to be ascertained in the same manner and through the same instrumentality, that the value of the property of persons is ascertained.

In addition to the tax upon its property, the complainant corporation is, under the constitution, subject to be assessed for taxation on its franchises and privileges, in such manner as the General Assembly may, from time to time, direct by general law, uniform as to the class upon which it operates.

The constitution designates two sources of revenue:

First. Taxation of property according to valuation; and

Second. Taxation of persons, companies and corporations, upon their business, franchises and privileges.

In determining the taxable value of these two classes of commodities, different modes may be adopted, and different instrumentalities used.

The first shall be "ascertained by some person or per-"sons, to be elected or appointed in such manner as the "General Assembly shall direct, and not otherwise."

The second shall be in such manner as the General Assembly shall, "from time to time, direct by general law, "uniform as to the class on which it operates."

The attention of the court will, hereafter, be more particularly called to this matter. At present it is only suggested.

The property of the corporation, which takes its place in the first class of taxable commodities, and which is sub-

ject to be assessed and taxed in the first mentioned mode, and not otherwise, consists of what is denominated in the law "railroad track" and "rolling stock" and "lands and "lots other than right of way," and "personal property "other than rolling stock."

The "lands and lots other than right of way," and the "personal property other than rolling stock," were assessed in the various counties in which they were situated, by the proper officers; the assessments returned by the county clerks to the State Auditor; by him laid before the State Board of Equalization, and by that board equalized to the company at the sum of $687,645.

There was no assessment in the counties of the company's property known as "railroad track" and "rolling "stock," and no return thereof made by the officers of the county to the Auditor; but the schedules thereof were returned by the company to the Auditor, and by him laid before the State Board of Equalization; and, thereupon, the board proceeded to and made an original assessment of all these descriptions of the company's property, equalizing it for taxation, at the sum of $7,186,252, which, added to the equalized value of the property assessed in the counties, made a total valuation of all the company's tangible property of $7,873,897, upon which it was assessed for taxation.

Of these assessments the appellants make no complaint. They ask no injunction to restrain the collection of the taxes thereon, but offer, in their bill, to pay them; and the company has, in fact, since the filing of the bill, paid them all.

What they do complain of, is that, in addition to the above assessment upon property which the company does own, it has been assessed for taxation upon a large amount of property which it does not own, and which, if subject to taxation at all, should be assessed against other persons

and corporations, and not against the Chicago, Burlington and Quincy Company.

After the tangible property of every description, owned by the company, had thus been listed and assessed to it, and the assessment equalized at $7,873,897, the State Board of Equalization added together the aggregate amount of all the *shares of capital stock, held and owned by the stockholders of the company; all the bonded indebtedness* of the company; and all the *bonded indebtedness of seven other railroad companies*, whose roads had been leased by the Chicago, Burlington and Quincy Company; and, after deducting from the sum thus obtained, the equalized assessed value of the company's tangible property, the balance was equalized at $12,123,668, upon which sum, as capital stock, the company is charged with taxes.

That the foregoing is the process by which the State Board of Equalization determined the amount of capital stock upon which it assessed the company for taxation, is fully established by reference to the resolutions adopted by the board for their governance, found in the statement of the case herewith, and to the proceedings of the board, and by the admissions in the answer of appellants.

It is claimed by the appellants that this assessment is for the franchise; but, in the proceedings of the Board of Equalization. there is nowhere an allusion to the franchise of the company except in the above resolutions. In their assessment, "franchises and privileges" are not hinted at. The assessment against the company is for capital stock alone, and what is assessed to it as capital stock, is, as charged in the bill, and as shown by the proceedings of the board, and the admissions of the answer, the aggregate sum compounded of the shares of stock held and owned by others, and of the debts of this and seven other corporations. This stock, and these debts, may be fit subjects of taxation; whether they are or not, it is not now necessary

to inquire or discuss; but, if they be taxable at all, it is as property, and not as franchises and privileges, and against the owners, and not against the company.

A share of stock is not a franchise or a privilege, but property. A thousand dollar bond is not a franchise, or a privilege, but property; and when either is taxed, it must be taxed as property, and by the same rule which governs the taxation of other property.

I.

The first question then, is, whether the Chicago, Burlington and Quincy Railroad Company is, under the state of fact which is shown to exist, liable to assessment for taxation upon these shares of stock, and this bonded indebtedness.

The State Board of Equalization claims the right to make the assessment under the fourth clause of section three of the "Act for the Assessment of Property, and "the Levy and Collection of Taxes," approved March 30, 1872.

That clause of the law provides that "the capital stock "of all companies and associations, now or hereafter cre- "ated under the laws of this State, shall be so valued by "the State Board of Equalization, as to ascertain and de- "termine, respectively, the fair cash value of such capital "stock, including the franchise, over and above the as- "sessed value of the tangible property of such company "or association, * * * provided, that in all cases "where the tangible property or capital stock of any com- "pany or association is assessed under this act, the shares "of capital stock of any company or association shall not "be assessed and taxed in this State."

It is necessary that two things shall concur to support the assessment.

First, the law must be in harmony with the constitution; and second, the assessment must be such as is authorized by the law.

First. Is the law constitutional?

If the construction put upon it by the State Board of Equalization be the true one, then, very manifestly, the law is in sharp conflict with the constitution, and cannot be enforced.

The constitutional requirement is that taxes shall be levied "by valuation, so that every person and *cor-* "*poration* shall pay a tax in proportion to the valuation of "*his, her, or its property.*"

The law passed for the purpose of giving effect to this constitutional provision, it not being self-executing, declares that "the *capital stock of all companies and associations*, "now or hereafter created under the laws of this State, "shall be so valued by the State Board of Equalization, as "to ascertain and determine, respectively, the fair cash "value of *such capital stock*, &c."

Under the construction which the State Board has given to this law, it has assessed the Chicago, Burlington and Quincy Railroad Company for taxation on the shares of stock, and on its own indebtedness, and the indebtedness of other companies.

If the law really authorizes this; if such be a true interpretation of the law, then, it is unconstitutional, unless it can be shown that the company is the owner of the shares of stock, and of the bonded indebtedness; for, by authority of the constitution, the company can be taxed only upon the property which it owns, and not upon property owned by others.

It is charged in the bill, and admitted by the answer, that, in making the contested assessment, the State Board "took into consideration the market value of the *bonded*

"*debt* of said Chicago, Burlington and Quincy Railroad "Company, reported by it as aforesaid, and the market "value of the *shares of stock* in said company, as the same "was valued in the hands of the shareholders."

The shares of stock and the bonds and mortgages, which the company has issued and delivered, as evidences and securities for the debts it owes, and the bonds and mortgages of the other railroad companies, issued and delivered by them, respectively, as evidence and securities for their debts, are, undoubtedly, property. Are they the property of the Chicago, Burlington and Quincy Railroad Company? If not, they were improperly assessed to it for taxation, and the collection of the taxes thereon ought to be enjoined.

It is conceded that all of the shares of the capital stock of the company have been sold and delivered; and that none of them are now in the possession, or under the control of, the company. Can they, in any sense, be said to be the property of the company? Most assuredly not. Those who hold them are stockholders in the company, and members of the corporation; but that does not make their property the property of the corporation, nor subject the corporation to assessment for taxation thereon. A corporation may be the owner of land; and, whilst it owns it, it is subject to taxation upon its value. But if it sells and conveys the land to one of its stockholders, one of the members of the corporation, it becomes his individual property, upon which he, and not the company, must thereafter pay the taxes.

A share of stock which a corporation has sold and delivered to one of its stockholders is as much the individual property of the purchaser as a quarter section of land which the company may have sold and conveyed to him; and the corporation is no more subject to taxation upon the one than the other.

The proposition that shares of capital stock in a corporation are the property of the stockholders, and not of the corporation, is so well established by authority that it is not necessary, and perhaps not proper, that it shall be discussed before this court *a priori.*

In the case of *Solamons* v. *Laing*, reported in 14 Jurist for December, 1850, Lord LANGDALE said :

" The dividend which belongs to the shareholders, and " is divisible among them, may be applied severally as " their own property ; but the company itself, or the di- " rectors, or any number of shareholders, at a meeting or " otherwise, have no right to dispose of the shares of the " general dividend, which belong to the particular share- " holders, in any manner contrary to the will, or without " the consent or authority of that particular shareholder."

This case is quoted with approbation by this Court in the case of *Dodge* v. *Woolsey*, 18 How., 343.

In *Van Allen* v. *The Assessors*, 3 Wall., 583–4, this Court stated the doctrine for itself thus :

" The interest of the shareholder entitles him to partici- " pate in the net profits earned by the bank, in the em- " ployment of its capital, during the existence of its char- " ter, in proportion to the number of his shares; and upon " its dissolution or termination, to his proportion of the " property that may remain of the corporation after the " payment of its debts. This is a distinct, independent, " interest on property held by the shareholder, like " any other property that may belong to him."

This was re-affirmed in *Bradley* v. *The People*, 4 Wall., 459.

Again, in *Bank* v. *The Commonwealth*, 9 Wall., 359, the Court said :

" It has been established as the law governing this ' Court, that the property or interest of a stockholder in

" an incorporated bank, commonly called a share, the " shares in their aggregate totality being called sometimes " the capital stock of the bank, is a different thing from " the moneyed capital of the bank held and owned by the " corporation."

The difference between a tax upon a corporation or the capital of a corporation, and a tax upon the shares of its stock owned by citizens, is fully recognized both by the Federal and the State Courts.

Austin v. *Board of Aldermen of the City of Boston*, 14 Allen, 362.

In note 1 to § 558 of Ang. and Am. on Corp., it is said a stockholder in a moneyed corporation has a perfect ownership over his own stock, and may sell and transfer it to whom he pleases, and from doing which the bank has no power to restrain him ; and reference is made to

Brightwell v. *Mallory*, 10 Yerg., 196, and
State v. *Franklin Bank*, 10 Ohio, 90, 97.

The shareholder's interest is personal to him, and only taxable in the place of his domicile.

Redf. Am. Railw. Cases, 507.

The situs of the shares in a corporation, for purposes of taxation, is that of the domicile of the owner. (*Ibid.*) Notwithstanding the control of corporations is dependent upon the ownership of the shares, the title of shares and the title to the property of the corporation which represents the capital stock with which it is purchased, is entirely distinct.

Redf. Am. Railw. Cases, 568.

The taxable quality of the shares arises solely from the supposed income arising therefrom, and has no reference whatever to the estate of the corporation, but solely to the domicile of the holder or owner, in the place of his domi-

cile, without reference to any tax imposed upon the corporation, its property or capital.

Redf. Am. R. W. C., 510.

In the nature of things, the capital of a corporation represented by stock owned by others, cannot, in any sense, be said to be owned by the corporation. The tangible property belongs to the corporation, and upon that it may be taxed. But the shares of stock are the property of the stockholders, and the debt of the corporation, and upon that it cannot be taxed.

State v. *Thomas*, 2 Dutch., 184.

Anxious to keep this argument within reasonable and readable limits, and to confine it very pointedly to the questions arising in the case, authorities upon this point will not be multiplied ; and the discussion of this branch of the case may therefore be closed by reference to section 9, Art. 11 of the Constitution of Illinois, which requires every railroad corporation in the State to keep " books, in " which shall be recorded the *amount of stock subscribed*, " *and by whom ; the names of the owners of its stock, and* " *the amounts owned by them respectively*," thus distinctly recognizing the fact that the stock is the property of the shareholders, and not of the corporation.

Now, if the shares of stock are the property of the shareholders, they cannot be the property of the corporation.

The same thing cannot have two distinct and separate owners at the same time, any more than two solids can fill the same space at the same time.

The shares of stock, then, not being the property of the corporation, it cannot be taxed upon them ; for it can be taxed only on property which *it owns*, and not upon that which is owned by others.

What has been said of the capital stock is equally true

of the other element of the assessment, the bonded indebtedness. It is in no sense the property of the company. To call it so is a perversion of terms, and a falsification of facts; nor is it a measure of the value of anything which the corporation owns or possesses. The property which a man owns is, not infrequently, in the inverse proportion to the debts which he owes; and it is difficult to conceive how the idea of calling a man's debts his property, or taking his debts as the measure of the value of his property, was ever suggested. If his debts belonged to him, they would no longer be debts, and he would no longer be a debtor.

But this question of the ownership of debts, like that of the ownership of the shares of stock, is settled by authority.

In *Railroad Company* v. *Pennsylvania*, 15 Wall., 300, 320, this Court said:

"But debts owing by corporations, like debts owing by "individuals, are not property of the debtors in any sense; "they are obligations of the debtors, and only possess "value in the hands of the creditors. With them, they "are property, and in their hands they may be taxed. To "call debts property of the debtors is simply to misuse "terms. All the property there can be, in the nature of "things, in the debts of corporations, belongs to the creditors to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no "locality separate from the parties to whom they are "due. * * *

"The bonds issued by the railroad company in this case "are undoubtedly property, but property in the hands of "the holders, not property of the obligors."

If, then, the shares of stock are the property of the stockholders, respectively, and the bonded indebtedness

the property of the bondholders, they cannot be the property of the corporation; and not being its property, it cannot be taxed thereon under the constitution; and a law which seeks, or assumes to authorize a taxation of the corporation upon property which it does not own, and of which it is not possessed, is, *pro tanto*, null and void; and any act which the State Board of Equalization, or other agency of the State, may perform in assessing the company for taxation upon property which it does not own, is also null and void.

Yet, this is precisely what the State Board of Equalization has done in respect to this corporation.

They have assessed to it, for taxation, property which it does not own, to the amount of many millions of dollars.

But this assessment cannot be sustained; first, because the provision of the constitution which requires that "ev- "ery person and corporation shall pay a tax in proportion "to the valuation of his, her or its property," excludes the power to tax a person or a corporation for or upon property which does not belong to him, her, or it; and second, because, if the corporation is first taxed upon its tangible property, which constitutes and represents the whole of its capital, and is then taxed upon the shares of stock, and bonded indebtedness, the proceeds of which have been invested in its tangible property, it will be taxed twice upon the same property; and the rule of uniformity and equality of taxation, which the constitution seeks, through its entire structure and spirit, to preserve, will be grossly violated.

It is indispensable to the validity of a tax that it shall be made ratably, that the burden may thus be equalized throughout the State, or districts upon which it is imposed.

Redf. Am. R. W. C., 500.

The Legislature can no more tax the same property

twice, for the same thing, than it can tax it twice as much as other property of the same description. This is self-evident, and requires no proof. For instance, the capital stock of a corporation is all invested in property, so that its capital and property become identical. No one will admit for a moment that the Legislature could tax both for the same thing. But they may, unquestionably, tax the corporation and the shareholders at the same time for the same general tax, and it is not double taxation in any just sense.

Redf. Am. R. W. C., 510.

The term "double taxation" does not, perhaps, exactly express the idea of the thing that has been done in this case, although it may describe it with sufficient precision for all practical purposes. Instead of being strictly double taxation, it is, in fact, the taxation of one person upon the property of another, which, if not in express terms, is by an implication as strong as expression, forbidden by the constitution. It is first taxing the corporation upon its own property, and then taxing it an equivalent, or greater amount, upon the property of the stockholders and bondholders.

Thus, A purchases a quarter section of land of B, and executes his note to B for the price. Now, the land and note are both property; but they are not the same property, nor the property of the same person. The land is the property of A, and the note the property of B.

If then A is first taxed upon the value of his land, and then again, an equivalent amount upon the debt which he owes B, he is taxed upon the property of another, and made to pay a tax out of proportion to the valuation of his property, which is a manifest violation of the constitution. If A was taxed twice as much upon his land as others were upon land of the same value, this would be double taxation upon the same property, which no one will insist

could be legally done. The constitution so clearly forbids this, that it is not attempted to be done directly; but the same result is sought by the indirection of first taxing A upon the land, to which tax he is subject, and then taxing him upon the debt which he contracted in the purchase of the land. These two processes are, in substance, the same thing, and the constitution no more permits the one than the other.

To tax the property, and tax the stock is, in effect, to tax the same thing twice over.

The State v. *Branin*, 3 Zab., 500.
Smith v. *Burley*, 9 N. H., 428.

So here, the corporation is taxed upon all its tangible property, which it does own, and then upon the debts which it contracted in the acquisition of that property, and which it does not own.

The bill avers, and the answer admits, that every dollar which has been realized by the company upon the sales of its stock, and from its outstanding bonds, has been expended in the construction, equipment, repair, replacement and extension of the road and its appurtenances; and that besides its tangible property, which has been listed and assessed to it for taxation at $7,873,897, and the taxes upon which it is ready and willing to pay, it owns no property, whatever.

Its tangible property represents all, and is all that it has of every kind and character; and yet it is assessed for taxation to the amount of many millions of dollars beyond the value of all it owns. This the appellees submit is unconstitutional, unequal, and singularly unjust; and they ask to have the collection of taxes on this excess of assessment enjoined.

Second. But the assessment made by the State Board, was not authorized by the law under which the board

professed to act, and cannot be sustained, even if the law shall be held to be constitutional. The law gives no sanction to an assessment against railroad corporations, upon the basis of the shares of stock, and the debts. The property of a corporation constitutes its capital, or capital stock; and when its property has been taxed, its capital stock has been taxed; and it cannot, constitutionally, be taxed again, under another name, for the same thing.

When the law speaks of the capital stock of railroad corporations, it means their *property*, and not the shares of stock in the hands of the stockholders.

The Supreme Court of Illinois has decided this to be the true interpretation and meaning of the law.

In the case of *Porter* v. *The R. R. I. & St. L. R. W. Co.*, not yet reported, but published in the Chicago Legal News, June 27, 1874, and which is relied upon by the Attorney General in this case, the court said: "We are satisfied, "from a careful examination of the revenue act, that the "Legislature did not, by the use therein, of the words, "'capital stock,' mean 'shares of stock,' either separately "or in the aggregate, but that they intended to designate "thereby, the *property of the corporation.*"

And again, after referring to many sections of the law, the court says: "It is thus seen that the property de-"scribed to be taxed, is described as *the property of the* "*corporation*, and where it is designed that the property of "the shareholders shall be taxed, it is correctly described "as 'shares of stock,' or 'shares of capital stock,' and we "have been unable to find an instance in which the words "'capital stock,' as used in the act, are not used to convey "a meaning other and different from that conveyed by the "words 'shares of stock,' or 'shares of capital stock.'"

Such being the law, by what authority did the State Board assess the Chicago, Burlington and Quincy Rail-

road Company for taxation upon the aggregate of the shares of stock, and the bonded debt?

It is true the court sustained the assessment against the Rockford, Rock Island and St. Louis Companies, but the case made by the bill there differed essentially from the case made by the bill here.

The court in its opinion in that case says: "The bill "filed by the appellee," (the railroad company), "alleges "that the board of equalization assessed against it for the "purpose of taxation for the year 1873, its property "denominated 'railroad track,' and 'rolling stock,' at the "sum of $2,146,932, and *its capital stock* at the sum of "$1,004,489, upon all of which 'taxes are levied.'"

The company complained that it was assessed for taxation on its *own capital stock;* but the court said the complaint could not be entertained, because by the terms of the law, every corporation was subject to be taxed upon its capital stock.

I quote from the opinion of the court: "The statute "is impeartive that the capital stock of all companies and "associations, now or hereafter created under the laws of "this State, shall be taxed; the mode of valuation is pre-"scribed; and the language is equally imperative that "when the capital stock or franchise is assessed, the shares "shall not be."

The court had already, in a previous part of the same opinion, held that the *capital stock* of a corporation, and the *property* of a corporation, were one and the same thing; when, therefore, the Rockford, Rock Island and St. Louis Company complained of the assessment of its capital stock, it was complaining of the assessment of its own property.

But this case is totally different. No complaint is made here in respect to the assessment against the Chicago,

Burlington and Quincy Company, upon its own property and capital stock. The complaint is, that after being assessed upon all of its own, it has been subjected to a further assessment upon *shares of stock and debts, which are the property of others.* The cases made by the bill of the Rockford, Rock Island and St. Louis Company, and by the bill of these appellees, are totally different.

The bill here alleges that the assessment made against the Chicago, Burlington and Quincy Company in the counties, and by the State Board of Equalization, and which aggregated the sum of $7,873,897, comprised and included everything which said company owned, except its franchises; and that, besides its said property upon which it had so been assessed, it owned no capital stock whatever.

The bill further alleges that the further assessment made by the State Board against the company of $12,123,668, under the name of a capital stock tax, was not an assessment upon anything held or owned by the company, but was upon the shares of stock held and owned by the individual stockholders, and upon the bonded indebtedness of the Chicago, Burlington and Quincy, and other railroad companies, and was an amount in excess of all the property belonging to the Chicago, Burlington and Quincy Company.

The answer admits that the entire proceeds of the shares of stock, and of the bonds and mortgages, had been invested by the company in its road and appurtenances, and tangible property; that that was assessed to the company for taxation; and that in making the additional assessment, under the name of capital stock, the State Board of Equalization *took into consideration the bonded debt, and the market value of the shares of stock as the same was valued in the hands of the shareholders.*

Here, then, is the distinct allegation in the bill, admitted

by the answer, that the assessment against this company under the name of capital stock, was over and above the entire value of its property and capital; and that this assessment was based upon the shares of stock in the hands of the stockholders, and the debts of this and other companies; and the question before this court is, whether that assessment can be upheld under the constitution and laws of Illinois.

No such question was before the Supreme Court of the State of Illinois in the case of *Porter* v. *The Rockford, Rock Island and St. Louis Railway Company;* and there is nothing in the opinion of the court in that case which tends to support the assessment in this. On the contrary, it is a very direct authority against the validity of the assessment. I quote again from the opinion of the court: "But it does not devolve upon us to justify the accuracy "of the assessment as made. In the view we have taken "of the case, the Board of Equalization assessed the value "of the capital stock, including the franchise, over and "above the assessed value of the tangible property, and "did not assess the shares of stock belonging to the share-"holders, or debts of the corporation. The property as-"sessed was the property of the corporation, upon which "it was liable to be assessed for the payment of taxes."

But, in this case, they did assess "the shares of stock belonging to the shareholders," and the "debts of the corporation," upon which the company was not liable to be assessed, and which the court says by implication, as strong as direct affirmation, was unauthorized and illegal.

Undoubtedly a corporation may have capital, or capital stock, (using the terms as meaning the same thing in reference to ownership by the corporation), in excess of its tangible, visible property. It may have money, or credits, or shares of stock, in other corporations, or all combined.

Whether this was so with the Rockford, Rock Island

and St. Louis Company, does not appear. But it does appear, and that is enough, that the court proceeded in its opinion upon the assumption that the company had been assessed on its own property only, and not on the property of others.

In a later case—*The Chicago, Burlington and Quincy Railroad Company* v. *Cole et als.*—quoted above, the court referred to its decision in the former case, and in reference to the rule adopted by the State Board of Equalization for the assessment of capital stock, said: "Without attempting to justify the wisdom or entire accuracy of this rule, "we said, in *Porter et als.* v. *The Rockford, Rock Island "and St. Louis Railway Company*, that, as in our opinion, "an approximation to the required valuation might be thus "obtained, we could not hold that the mere adoption and "application of the rule were sufficient evidence of fraud "on the part of the Board of Equalization, or that property had been assessed against the corporation which "did not belong to it, upon which it was to be taxed, to "authorize a Court of Chancery in interfering by way of "injunction."

The decision was made to turn upon the fact that it did not appear that the company had been assessed upon property which it did not own.

The court was asked to presume that it had been so assessed. This it declined to do, because, in the opinion of the court, the mere adoption of the rule, standing by itself, was not sufficient evidence that unauthorized assessments had been made. The language of the court on this point is very explicit. They said: "It is argued that by "adopting this mode of valuation, the board assessed "the corporation upon the value of the debts which it "owes, and which are not, in any sense, its property. *We "are not to assume that this was done, as it is not enjoined by*

"*the revenue act, and it would be in clear violation of the* "*duty imposed on the board.*"

Here the court is asked to make no assumptions. It is not asked to raise any presumptions merely from the rule. The bill distinctly charges that this company was assessed upon the shares of stock; upon its own debts, and upon the debts of other corporations, of none of which was it the owner, and the answer as explicitly admits that these were all factors in the assessment against the company. Taking them into consideration as the basis of the assessment, was, in the language of the court, "a clear violation of the duty imposed on the board."

It was an assessment against the company upon many millions of property, which it did not own, and upon which it was not subject to taxation.

It is averred in the bill, and admitted by the answer, that the company had invested the entire proceeds of the shares of stock, and of its bonded debt in the road, and its appurtenances, in its visible tangible property, upon the whole of which it had already been assessed; and that besides such tangible property it owned nothing whatever, except its franchise; and these allegations are admitted by the answer, so that it is shown that, in making this assessment, the very things were done which the Supreme Court of Illinois has pronounced a "clear violation of the duty imposed on the board."

That the proceedings of the Board of Equalization were not authorized by the law, and were, therefore, null and void, is made palpably manifest by bringing the law and the rule adopted by the board, and under which it acted, into juxtaposition.

The law is, that "the capital stock of all companies and "associations, now or hereafter created, under the laws of "this State, shall be so valued, by the State Board of "Equalization, as to ascertain and determine, respectively,

" the fair cash value of such capital stock, including the " franchise, over and above the assessed value of the " tangible property of such company or association."

The rule by which the board resolved to be governed is as follows: " The market or fair cash value of the *shares* " *of capital stock*, and the market or fair cash value of the " *debt*, (excluding from such debt the indebtedness for " current expenses), shall be combined or added together; " and the aggregate amount so ascertained, shall be taken " and held to be the fair cash value of the capital stock, " including the franchise, respectively, of such companies " and associations."

The law directs an act to be performed to a specific thing. The thing is the capital stock of the corporation; the act, the valuation of that capital stock. The board cannot substitute some other act and thing, and satisfy the law by declaring them the equivalents of what they are required to do. In that regard they have no discretion. They must follow the law, and if they do not, their acts are not valid and binding.

Bank of Chemung v. *City of Elmira*, 53 N. Y., 52.

In the case before referred to, of *Porter* v. *R., R. I. & St. L. R. R. Co.*, the court says: " No discretion is left to " the board as to what shall be assessed, or what degree " of value shall be ascertained." The thing to be assessed is the capital stock of the company; and the degree of value is to be measured by the property of the company. *It* is to be valued; and upon *its degree of value* the assessment is to be made. But the capital stock of the company is represented by the property of the company, and not by the shares of stock, or the debt, or both combined; and to ascertain its value an appraisement of the property must be made. Whatever the value of that property is, is the value of its capital, or capital stock—neither more nor less.

The value of the capital, or capital stock of the company may be great, while the shares of stock are worthless.

The court, in the above mentioned case, illustrates this as follows: "Where a corporation is free from debt, and "the aggregate value of its shares of stock is, say "$150,000, it is assumed that the value of its capital stock, "including its franchise, is $150,000. If the corporation "in the given case is indebted $150,000, the shares of "stock will be worth nothing; but the value of the debt "will be $150,000, which is the value of that from which "its payment can be enforced;" that is, its property or capital stock; so that while the capital or capital stock of the company may be of very great value, the shares of stock may be utterly worthless. The value of the shares of stock, therefore, furnishes no criterion of the value of the capital stock of the company. That is to be measured by its property, and its value to be ascertained by an appraisement of the property. But in this case that had already been done. The property or capital stock of the appellant had already been assessed, and to value it again, would make double taxation too palpable. That had to be evaded; and, to evade it, it was necessary to evade the law. The law made it the duty of the board so to value, that is, so to appraise the capital stock of the company as to ascertain its fair cash value, including the franchise, &c.

As the court has said: "No discretion is left to the "board as to what shall be assessed." It is the capital stock of the company.

But this the board neither did nor claims to have done. It valued something else, which did not belong to the company, and declared by resolution that that valuation of something else should be taken and held to be the fair cash value of the capital stock of the company, including its franchise.

They might just as well have resolved that two and two

should be taken and held to be six instead of four. There would be as much reason and as much efficacy in the one as the other.

If it be said that the board was at liberty to adopt its own mode of ascertaining the value of the capital stock, including the franchise, it is answered that it was not at liberty to adopt a mode which was not sanctioned by the law, and which would result in evading the performance of the act enjoined by law, and substituting an invention of its own therefor.

The law enjoined the board to value the capital stock of the company.

This the board declined to do, but resolved that it would value the shares of stock and the debts, which the company did not own, and substitute this unauthorized act for the act which the law required, and call this valuation the value of the company's capital stock.

If the board had a discretion in the choice of the mode of determining what it might choose to call the value of the capital stock of the company, without respect to the act which the law directed to be done, it could just as well have valued the elevators in Chicago, in which the grain transported over the road is discharged, and have resolved that their aggregate value should be taken and held to be the fair cash value of the capital stock of the company, including its franchise, as to have done what it did.

The choice of one of these methods was as fairly open to the board as the other.

If it had adopted the latter, the assessment would certainly be rejected as invalid, for the reason that the board had not done what the law directed it to do, but quite another thing, which it sought to substitute for the act required. This reason applies with equal force to the method actually adopted by the board.

It did not value, or profess to value, the capital stock of the company as directed by law, but the individual shares of capital stock, and the indebtedness, and it was from the aggregate of these two combined that the amount which was assessed against the company for taxation, under the name of capital stock, was derived.

The company had nothing answering to this second assessment, except what it had already listed under another description. If, then, the two assessments were of the same thing, it was clearly a double taxation.

If they were not of the same thing, then the second assessment was of something which the company did not own; for the company had already given in everything it did own; and if the second assessment was of property belonging to the company, it must necessarily have been of the property previously assessed. If it was not the same property which had already been assessed, then it was not the property of the company, and the company could not lawfully be taxed upon it.

Neither the shares nor the debts, in their separate parts, belong to the company, and they cannot, therefore, belong to it in their totality. Yet it is this totality, made up by combining values, acknowledgedly belonging to other parties, upon which the company is assessed for taxation a second time.

The Board of Equalization cannot make this aggregate of the separate property of others, the property, or the measure of the value of the property of the company, by resolving that it shall be taken and held to be so. If the company had any capital stock, upon which it had not already been assessed, why did not the board ascertain its fair cash value, and assess it to the company at such value?

The truth is, as averred in the bill, and established by the proofs and admissions of the answer, that every

cent's worth of property owned by the company had already been assessed to it ; and to get any further assessment, it was necessary to duplicate that already made, or to make an assessment upon property which the company did not own.

But, notwithstanding it is admitted that the debt and the shares of stock were taken into consideration, and were in fact the only values considered by the board in making the assessment against the company; and notwithstanding the assessment is for the precise aggregate amount of such shares of stock and debt, still it is insisted by the Attorney General that the assessment was not upon the debt and shares, but that they were used only as the measure of the value of something else, upon which the tax was to be paid.

It is difficult, indeed impossible, for me to comprehend the distinction between taxing the company upon the debt and the shares of stock, and upon the values of the debt and the shares of stock. The distinction, if there be one, is so subtle and shadowy as to elude my grasp. It is just as easy for me to discover a distinction between taxation upon a quarter section of land, and taxation upon its value measured by the land.

The fact is, there is no difference. They are one and the same thing. The law does not deal with shadows, but realities; and when we are informed that a party is to be taxed upon the value of a given thing, the law will recognize no difference betwen that and taxation upon the thing itself; for they are, in substance, one and the same thing. And so this court has held. Precisely the same question in principle, and substantially the same in facts, was presented in the Bank tax case, 2 Wall., 200.

The New York law subjected the banks to "taxation " on a *valuation equal to the amount of their capital stock* " *paid in*, and their surplus earnings," &c.

The resolution of the State Board of Equalization subjects the railroad companies to taxation on an amount equal to "*the market or fair cash value of the shares of cap-* "*ital stock, and the market or fair cash value of the debts* "*added together.*"

It was contended in the New York case that the tax was not upon the capital stock of the bank, but upon the franchises and privileges; and that the reference in the law to the capital stock and surplus earnings "was only for "the purpose of fixing the amount which the corporations "are annually to pay for their franchises."

It is contended here that the tax is not upon the *shares of stock and debt*, and that reference is made to them, in the resolution of the State Board of Equalization, only for the purpose of fixing the amount which the railroad companies are annually to pay for their *own capital stock and franchises*. But this court said, "Where the capital of the "banks is required or authorized by the law to be in- "vested in stocks, and, among others, in United States "stocks, under their charters or articles of association, and "this capital, thus invested, is *made the basis of taxation* "of the institutions, there is great difficulty in saying that "it is not the stock thus constituting the corpus, or body "of the capital stock, that is taxed;" and the court decided that the tax was upon a valuation of the capital and property of the bank, which consisted of stocks of the United States, and was consequently illegal and void.

Now, the Attorney General is far more astute than I can claim to be, if he can trace any difference between the case at bar and the case from which I have read.

The assessment here, is upon the *shares of stock and debt*, neither of which is taxable to the company according to the decisions of the Supreme Court of Illinois; and the assessment is, therefore, without authority, and null and void.

II.

Having, as I trust, shown that the assessment of $12,-123,668, made by the State Board of Equalization against the company, under the name of capital stock, cannot be sustained under the first clause of Section 1, Article 9, of the Constitution of Illinois, which requires the assessment to be upon property owned by the corporation, and to be by valuation, I proceed to inquire whether it can be upheld by the second clause, which provides that "the Gen-"eral Assembly shall have power to tax * * * persons "or corporations owning or using franchises and privi-"leges, in such manner as it shall, from time to time, di-"rect by general law, uniform as to the class upon which "it operates."

The first clause of the section is imperative: "The "General Assembly *shall* provide such revenue as may "be needful, by levying a tax by valuation, so that every "person and corporation *shall pay a tax* in proportion to "the valuation of his, her, or its property."

The second clause is permissive: "The General As-"sembly *shall have power* to tax * * * persons or cor-"porations owning or using franchises," &c.

This power may or may not be exercised in the discretion of the legislature. But, when exercised, the General Assembly must direct the manner in which persons or corporations owning or using franchises and privileges shall be taxed therefor.

The tax is not upon property capable of being valued; but directly upon the person or corporation for the ownership or use of an intangible, incorporeal thing, which has no standard of value, and which, of itself, furnishes no measure of the amount of tax to be imposed.

The legislature is clothed with discretionary power to decide whether or not such persons and corporations shall

be taxed; but, when it has determined that the tax shall be levied, its only further discretion is in the choice of the mode or method of ascertaining and assessing the tax. The command to it to direct the manner is imperative. This duty it cannot escape. It cannot devolve it upon another; and until it has *directed the manner*, no tax whatever can be assessed against persons and corporations for "franchises and privileges."

The assessment cannot, therefore, be sustained.

1. Because the General Assembly has passed no general law uniform as to the class upon which it operates, directing the manner in which persons and corporations shall be taxed for the ownership or use of franchises and privileges.

As before remarked, the franchises and privileges, mentioned in the constitution, are not treated as property by that instrument, and are not to be assessed and taxed as property. It is not the thing itself, the franchise or privilege, which is the subject of taxation, but the persons or corporations owning or using such franchises and privileges.

After providing for "levying a tax by valuation," so that every person and corporation shall pay a tax in proportion to the valuation of his, her or *its property*, the constitution further provides that the General Assembly shall have the power to tax *persons or corporations* owning or using franchises and privileges.

It did not intend that the franchise should be taxed as *property*, and that then the *person* or *corporation* should be taxed again for its use.

Franchises are excluded from the category of taxable property, and subjected to taxation only by the assessment of an excise tax upon the persons or corporations owning

or using them; and the legislature must pursue the constitutional mode. But this it has not done.

The only law by which the State Board of Equalization was authorized to intermeddle with franchises at all, is to be found in the fourth clause of the third section of the revenue law, which is as follows:

"The capital stock of all companies and associations, "now or hereafter created under the laws of this State, "shall be so valued by the State Board of Equalization as "to ascertain and determine, respectively, the fair cash "value of such capital stock, including the franchise, over "and above the assessed value of the tangible property of "such company or association."

In the entire revenue law there is not, I believe, another syllable touching the duties of the State Board in respect to the franchises of railroad corporations.

It is from this, and this alone, that the board derives its authority to subject the franchises to assessment for taxation.

If this law be constitutional, then it gave to the board the legal right so to value the capital stock of the company as to ascertain its fair cash value, including the franchise, but nothing more. It gave no power to value debts, or to include debts in the valuation.

The next paragraph of the section of the act above referred to provides that: "Said board shall adopt such "rules and principles for ascertaining the fair cash value "of *such capital stock* as to it may seem equitable and just, "&c."

This clearly was an authority to ascertain the fair cash value of the property of the company, over and above its tangible property, which had already been assessed—viz., cash, credits, stocks, &c., if any such property was owned by the company. This was the full scope of the authority

given. It extended to nothing but the *property of the company*. As already shown, the Supreme Court of Illinois has held this to be the true and only meaning of the law; that wherever the law uses the term "capital "stock," it is used to designate the property of the corporation; and that there is not a single instance in which the words are used in the law in any other sense.

The act gives no directions whatever for the assessment of a tax on "persons or corporations owning or using "franchises and privileges;" nor does it empower the State Board of Equalization to adopt any "rules and prin- "ciples" for ascertaining the value of franchises and privileges.

That tribunal was authorized to adopt rules and principles for ascertaining the fair cash value of the *capital stock only;* and when it went further, and declared, by resolution, that the *shares of stock* and the *debt* should be added together, and that the aggregate amount thus ascertained should be taken and held to be the value of the *capital stock of the company, including the franchise*, it transcended its powers, and its act was null and void.

2. The assessment cannot be sustained, because, even if it be conceded that the resolutions adopted by the Board were within the purview of the law, the Board disregarded them ; transgressed the rule which they prescribed ; and included in the assessment many millions of dollars not authorized by the resolution.

The rule was that the shares of stock and the *debt of the corporation* should be combined or added together, whereas, the Board added together the shares of stock, the debt of the corporation, *and the debt of seven other corporations*, and made the aggregate thus obtained the basis of the assessment.

The Supreme Court of Illinois, in the case of the *C. B.*

and Q. R. R. Co. v. *Cole*, above referred to, has decided that this was unauthorized, illegal and void.

3. The assessment cannot be sustained as a franchise tax, because no assessment was, in fact, ever made against the company for and on account of its franchises and privileges, as will appear by reference to the report of the proceedings of the State Board of Equalization.

On pages 79, 80 and 81 of that report will be found all that pertains to this assessment, and by which it is shown that the assessment is for what the State Board calls capital stock, and for that alone. The assessment does not purport to be for "franchises and privileges," nor does it appear that there was any attempt to levy a tax for or upon them, or upon the company for their use.

On page 79, the report says :

"The committee on assessment of capital stock of cor-
"porations presented tbe following report :

"To the State Board of Equalization :

"Your committee on assessment of capital stock of cor-
"porations, present the result of their work herewith,
"in tables A, B and C."

On page 80 is the first table referred to, with the following caption :

"Table A, showing the assessment made by the State
"Board of Equalization on the capital stock of railroads,"
&c.

The sixth column of the table has the following heading :

"Market or actual value of paid capital stock and debt,
"as determined by the State Board."

The column then shows that the total amount charged to the Chicago, Burlington and Quincy Company as capi-

tal stock, and which was obtained by adding together the aggregate of the shares of paid up stock, and the debts of this and other corporations in the State of Illinois, was $33,329,275.

As shown by other columns, with headings which designate it as "capital stock," this sum was equalized with other property in the State by deducting 40 per cent., so that the equalized amount of so called capital stock assessed against the company was $19.997,565.

An examination of the table shows, beyond the possibility of a doubt, that no other element than the shares of stock and the debts, not even to the value of a single cent, entered into the composition of this enormous sum ; and it is a most extraordinary perversion of language to call it an assessment for or upon franchises and privileges.

Whatever conclusion the Court may reach as to the liability of the company to taxation upon this sum, we never can escape from the demonstrated fact that the entire assessment, to the uttermost farthing, is made up of shares of stock and debts which, belong to others, and not one dime's value of which is the property of the company to which it is charged.

4. If this shall be held to be an assessment upon franchises and privileges, or for the use thereof, it cannot then be sustained, because, in making it, the State Board totally disregarded the uniformity and equality of assessment required by the constitution.

When persons or corporations are taxed for the use of franchises and privileges, it must be by general law, "uni-" form as to the class upon which it operates."

No one of a given class can be taxed, unless all of the class are, by the same uniform rule.

In the meaning and sense of the constitution, railroad

corporations unquestionably constitute one and the same class.

If, therefore, the General Assembly should pass a law providing for the taxation of some of the railroad corporations of the State for the use of franchises and privileges, and exempting others, the law would be unconstitutional and void.

If the law should provide for the taxation of all by a uniform rule, and the officers appointed to execute the law should assess some, and intentionally and of purpose permit others to go free, the assessment would be illegal, null and void.

Now, this is just what the State Board of Equalization did.

The constitution permits the General Assembly to tax corporations for franchises and privileges, but requires it to be done by a uniform rule, which shall embrace the entire class selected for taxation. The law provides that the capital stock, including the franchises, of all companies and associations existing under the laws of Illinois, shall, alike, be the subjects of taxation.

But the State Board of Equalization, when it came to execute the law, selected a portion of the railroad corporations, and assessed them exorbitantly, while another portion it entirely exonerated and released from the burden.

When this assessment was made, there were fifty-eight railroad corporations in the State of Illinois, owning railroads which were in operation. Upon twenty-two of these, no assessment whatever was made by the State Board on account of capital stock and franchises, or either of them ; but the entire assessments on this account were imposed upon the remaining thirty-six companies.

It is not necessary to insist that the accidental omission

of one or more companies would vitiate the entire assessment. I have no hesitation in saying that, in my opinion, it would not. The error could be corrected in the next year's assessment, and all be thus made to contribute their equal proportionate part to the revenues of the State. But, when a portion, few or many, are deliberately and intentionally exempted, and the entire burden imposed upon another portion, either few or many, of the same class, the entire assessment is tainted with fraud, and is null and void.

Had the law specified by name twenty-two of the railroad corporations of the State, and then declared that they should be exempt from taxation, on account of capital stock and franchises, but that such tax should be levied upon and collected from the other thirty-six like corporations, no court would hesitate to declare the law unconstitutional and void, and to annul and set aside any assessment which had been made under it.

Nor will the court any more hesitate to annul and set aside, as fraudulent and void, such an assessment made by the State Board, in open defiance of both constitution and law.

In *Weeks* v. *Milwaukee*, 10 Wis., 242, and *Hersey* v. *Board of Supervisors*, 16 Wis., 186, it was held that where property subject to taxation was designedly and purposely omitted from the assessment rolls, the whole assessment was thereby vitiated, because the rule of uniformity and equality was thereby violated, and greater burdens thrown upon other property, than it could justly be required to bear.

And to the same effect is

Henry v. *Chester*, 15 Vt., 460,
Knowlton v. *Supervisors*, 9 Wis., 414, and
Brewer Brick Company v. *Inhabitants of Brewer*, 62 Maine, 74-5.

But there is a still more flagrant injustice and inequality in the assessment, to be complained of, in this case.

The thirty-six railroad corporations selected by the State Board for taxation on capital stock and franchises all had charters substantially alike. The charter of each of these endowed it with substantially the same powers, privileges and faculties that were enjoyed by the Chicago, Burlington and Quincy Company, under its charter ; and yet largely more than one-third of the entire assessment upon all these corporations, under the name of capital stock assessment, and which, it is claimed, includes the franchises, was against the Chicago, Burlington and Quincy Company alone.

It has been shown that the shares of stock, and the debts, which were computed in the assessment against the Chicago, Burlington and Quincy Company, did not belong to it.

If the franchise was included, then the entire assessment of $12,123.668 made against the company, was for the franchise ; for there was nothing else entered into the assessment which was owned by the company.

Now, it will hardly be transcending the limits of fair and respectful discussion to suggest that it is absurd and ridiculous for the State Board to say that the franchise of this company is worth to it over $12,000,000, when all its accumulations, and property of every kind and character, at the end of more than twenty years of prosperous existence, and successful operation, are worth less than eight millions.

And the absurdity becomes still more glaring when the same tribunal declares that twenty-two other charters, in all their material features exactly like that of the Chicago, Burlington and Quincy Company, are worth nothing ; and that the charter of the Chicago, Burlington and Quincy Company, under which it operates about four hundred miles of railroad, is worth largely more than one-third as much as the combined value of fifty-seven other charters

just like it, and under which the companies owning them operate over five thousand miles of railroad.

The rule of taxation prescribed by the constitution of Illinois is equality and uniformity. If this rule is disregarded by the law, the law is unconstitutional. If observed in the law, and ignored by the assessors, the assessments are null and void.

It is indispensable in taxation that the imposition shall be made ratably, that the burden may thus be equalized throughout the State or district. And if property is taken by mere arbitrary imposition, and without the *bona fide* purpose or attempt to thus equalize the burden, it is nothing less than the confiscation of the property.

Redf. R. W. Cases, 500.

By a law of New Jersey, passed in 1869, it was provided that the railroad companies theretofore paying transit duties to the State, should thereafter pay annually a tax of one-half of one per cent. upon the cost of their respective works, including all property not otherwise taxed, "un- " til the legislature shall, by general law, impose an uniform " State tax, equally applicable to all railroad and canal cor- " porations of this State, and such companies shall pay " such uniform tax, &c."

This act was accepted by the United Railroad and Canal Company as an amendment to, or modification of, its charter contract with the State.

Afterwards a tax was imposed upon the company by virtue of a law passed in 1873, which, it was contended, conformed to the requirements of the act of 1869.

The tax was resisted by the company on the ground that the act of 1873 was not uniform in its operation ; that it was not equally applicable to all railroad and canal corparations ; but that it imposed burdens of taxation on it from which other companies were exempt.

The court sustained the objection, and said: "The act "of 1873 is not an act of uniform taxation, within the "meaning of the act of 1869. The power of taxation in "the latter act provided for is by an uniform tax, applica- "ble to all railroad and canal corporations of this State. "The act of 1873 applies on the railroad companies. It "does not extend to canal companies. * * *

"As applicable to these prosecutors, there is peculiar pro- "priety in adhering to the literal terms of the act in this re- "spect. One of the corporations included in the consoli- "dation is a canal company. All are engaged in the trans- "portation of freight. On the plainest principles of justice, "they are entitled to insist that they shall not be placed at "disadvantage, in the matter of taxation, with other cor- "porations engaged in the prosecution of the same busi- ness."

United R. R. & Canal Company v. *Comm'r*, 8 Vroom, 247–8.

In further support of the proposition that, by the requirements of the constitution and laws, assessments and taxes must be equal, and must operate alike upon all persons and corporations, who exercise a particular employment, or enjoy the same privileges, the cases of *Portland Bank* v. *Apthorp*, 12 Mass., 252; *Commonwealth* v. *People's Savings Bank*, 5 Allen, 431, and *Oliver* v. *Washington Mills*, 11 Allen, 268, will be found pertinent and instructive.

In deciding the case of *Bureau County* v. *The Chicago, Burlington and Quincy Railroad Company*, 44 Ill., 238, the court asked, "Does the power exist anywhere to destroy "the cardinal principle of uniformity of taxation, so forci- "bly and prominently insisted upon by the constitution?" and answered, "It seems to us there is something so mon- "strous in the proposition as to be indefensible by fair ar- "gument. Regarding uniformity as the vital principle, "the dominant idea of the constitution, where can the

"power reside to produce its opposite? * * * We "affirm such a power nowhere exists, and if it did, it would "be so revolting in its exercise to the lowest sense of justice "with which our species is imbued, as to justify any and "every lawful expedient for relief against it."

Now, this rule of uniformity and equality, the observance of which is indispensable to the validity of taxation, could not have been more grossly transgressed than it has been by the State Board in this case.

The fifty-eight railroad charters in Illinois are substantially alike.

They confer the same powers and privileges, and are of equivalent value. The value of a franchise depends upon the powers granted and privileges conferred; upon the faculties with which the corporation is endowed, and not upon the success of the business in which it may be engaged.

Two charters in precisely the same terms, containing the same provisions, and granting the same powers and privileges, are of exactly the same value, whatever may be the relative success and prosperity of the corporations which own and exercise the franchises.

One may be managed with skill, prudence, judgment and economy, and the business, consequently, be successful and profitable, and its accumulations rapid; while, for the lack of these qualities, the other may fail in its enterprise, and sink its capital.

But the value of the franchises is in no degree affected by these circumstances. The charters are not changed by the fluctuations in business, but remain the same in the faculties they confer, and consequently in their intrinsic value.

A corporation may, to-day, be financially sound, healthy and thriving. Next year losses and misfortunes may have pushed it into bankruptcy; but in adversity, as in pros-

perity, its charter is the same, and still secures to the corporation all the powers and capacities for business under it that were ever possessed.

It was, undoubtedly, the intention of the constitution of Illinois that the tax for the use of a franchise should be an excise, prescribed by a rule uniform as to the class upon which imposed; and that such tax should be graduated by the powers, privileges and capacities conferred by the charter, and not by the success of the business prosecuted under it.

If the business be prosperous, the company is taxed upon its products, as property.

These taxes increase in proportion as the wealth of the company increases, from the success of its business. Every dollar it accumulates is at once subjected to taxation as property; but nothing is added by such prosperity to the value of the franchise. That remains the same through all the fluctuations of business, in nowise increased or diminished in value by the vicissitudes of trade.

How utterly, then, was the rule of uniformity and equality disregarded, when the charter of the Chicago, Burlington and Quincy Company was assessed at a value exceeding twelve millions of dollars, and other charters, just like it, were, at the same time, and by the same tribunal, held to be of no value, and subject to no tax.

These questions have not been before the courts of Illinois. They are presented now for the first time. and this court will give its own construction to the constitution and laws of Illinois; to the rules adopted by the State Board of Equalization; and to its action under them.

I bring them together, that the court may, at one view, see their incongruities.

The constitution: "The General Assembly shall have "power to tax * * * persons or corporations

"owning or using franchises and privileges, in such man-
"ner as it shall, from time to time direct, by general law,
"uniform as to the class upon which it operates."

The law: "The capital stock of all companies and as-
"sociations * * * shall be so valued by the State
"Board of Equalization, as to ascertain and determine, re-
"spectively, the fair cash value of such capital stock, in-
"cluding the franchise," etc.

The rule of the State Board: "The market or fair
"cash value of the *shares of capital stock*, and the market
"or fair cash value of *the debt*, * * shall be combined
"or added together, and the aggregate amount so as-
"certained, shall be taken and held to be the fair cash
"value of the capital stock, including the franchise, re-
"spectively, of such companies and associations."

The constitution provides for the taxation of the company for the *franchise*, pure and simple.

The law says that that shall not be; but that the franchise shall be combined with the *capital stock of the company*, and that the two shall be taxed together, as one and the same.

The resolution, or rule of the State Board, declares that the *shares of capital stock*, and the *debt of the corporation*, shall be added together, and that the aggregate amount thus obtained, shall be taken and held to be the value of the capital stock and franchises of the corporation.

Then came the action of the Board of Equalization, under the rule, and they estimated the value of *the shares of capital stock*, the value of the *debt of the corporation*, and the value of the *debts of seven other corporations*, and assessed it all to the company, under the name of capital stock, at over twelve millions of dollars; the tax upon which exorbitant sum, is demanded from the company, as that which the constitution authorizes to be imposed for the use of "franchises and privileges."

The law departed from the constitution; the rule adopted by the board departed from the law; and the action of the board departed from the rule, till no connection, congruity or resemblance can be traced between the assessment actually made by the board, and that authorized by the constitution.

A rule could hardly have been devised better calculated to defeat uniformity and equality, and to work injustice and oppression in taxation, than that adopted by the State Board of Equalization.

In its practical operation it is often the exact reverse of the rule of the constitution, which requires taxation to be in proportion to the value of property owned.

Thus, the rule of the board is, that the value of the shares of stock and of the debt, shall be added together; that from the sum thus obtained the value of the tangible property shall be deducted, and that the residue shall be held to be the value of the franchise.

Now, a corporation owes, say, $100,000, and has $100,000 worth of tangible property. The debt is worth par, because the property is adequate to its payment; but the shares of stock are worth nothing, because the assets will all be exhausted in the payment of the debt, and there will be nothing left for the stockholders. In this case, the debt and tangible property being equal, there is no residuum when one is deducted from the other; so that the franchise is worth nothing, and no tax is assessed for its use.

Another corporation owns a hundred thousand dollars of tangible property, and owes no debt. The shares of stock are consequently worth in the aggregate, a hundred thousand dollars; but in this case of a rich corporation, as in the other of a bankrupt one, the franchise is worth nothing, and the corporation pays no tax for its use, because it owes no debt, and its shares of stock and tangible property are, therefore, of exactly equivalent value.

Thus, neither the franchises of corporations which are just able to pay their debts, nor of those which owe no debts, are of any value.

In all cases the working of the rule is, to exempt corporations that owe no debts, from the franchise tax; for where there are no debts, the property of the corporation, and the shares of capital stock are the equivalents of each other, and under the rule the franchises are of no value.

No justification of this proceeding can be found in the constitution of Illinois.

That instrument required the General Assembly to direct the manner of taxing corporations for their franchises. This was a discretionary power, vested by the constitution in the legislature, to be exercised by them, and which they could not delegate to the State Board of Equalization.

Moore v. *Chicago*, 60 Ill., 243.

But even if the General Assembly could delegate to the State Board the power to prescribe the rule, the power has been so unjustly and oppressively used, as to vitiate all that has been done under it.

In the language of this court, in *Loan Associations* v. *Topeka*, 20 Hall, 663: "There are limitations on such "power, which grow out of the nature of all free govern- "ments, implied reservations of individual rights, without "which the social compact could not exist, and which are "respected by all governments entitled to the name."

To add one's own debts to the assessed value of his property, and exact taxes from him upon the whole, is an oppression; but, when to his own debts are added the debts of others, the oppression becomes such as no good government or just system of laws will sanction or permit.

The Attorney General admits that this assessment, as it stands, cannot be sustained; he admits that the company cannot be lawfully assessed for taxation upon the shares of

stock owned by the stockholders, nor upon its debts owned by its creditors; (see his brief, page 6); and that the words "capital stock," in the revenue law, mean the capital or property of the corporation; (brief, 7); and that the task before the board was to ascertain the value of every species of *property owned by the corporation*, including its franchise. (Brief, p. 8.)

He then states it as a proposition of law, not to be controverted, that the assessors alone can ascertain and fix the value of property for taxation, and that there is no power, express or implied, by which the courts can fix a valuation, or review the action of the assessors; that the law has not, nor can it, in view of the provisions of the constitution, empower the courts to fix the valuation of property for taxation; that when the assessors have acted, their action is final, and the taxpayer must submit to it unless he can show that it was fraudulently made, or that property has been assessed not liable to taxation, or that the Legislature has disregarded or transcended the principles of equality, or where a tax has been levied not authorized by law. (Brief, p. 22.)

To all this, I give my full and unqualified assent.

That the assessors are the only tribunal which can value property for taxation, and fix the amount at which it shall be assessed for taxation, and that the courts have no power to review, and change or alter such assessment, is a proposition which has been so emphatically asserted by the Supreme Court of Illinois, as to put it beyond the pale of controversy.

I quote from the case of the *Republic Life Ins. Co.* v. *Pollock*, referred to by the Attorney General, and printed under the description of Illinois Tax Injunction Cases. The Court, after quoting from the Constitution, says:

"Thus it it will be seen that all power to fix a valua-

" tion is taken from each of the departments of the gov-
" ernment. It is unmistakably vested in the persons
" elected under the requirements of the statute, *and it can*
" *only be fixed by them, and not otherwise.* * * * Nor
" is there any power, expressed or implied, *by which the*
" *courts can fix a valuation, or review the action of the*
" *assessors.* They are invested with the sole power, and
" we are aware of no authority to review their action.
" The law has not, nor can it, in view of this constitutional
" provision, empower the courts to fix the valuation of
" property for taxation. We regard no proposition
" clearer."

See, also, *Spencer & Gardner* v. *The People*, referred to by the Attorney General.

Whether the tax be authorized or not, and whether the assessment be lawful or unlawful, just or fraudulent, arbitrary or reasonable, the court has no power to change, alter or modify it. It is a unit, and the court must deal with it as a whole. It must sustain it *in toto*, or annul it *in toto ;* for to modify it, by increasing or diminishing the amount, would be to substitute an assessment by the court for that of the State Board of Equalization ; the only tribunal which, under the constitution and law, can make the assessment at all.

The State Board of Equalization fixed the capital stock assessment against the company at $12,123,668. No matter by what rule they were governed and guided, or whether by any; no matter what factors they used in computing the amount, they report, as the result of their labors, as the conclusion of their judgment, that the value of the capital stock of the company, over and above all its tangible property, is $12,123,668.

This is the assessment which the company is resisting. Can it be permitted to stand? Was it lawfully and justly made? Was it " the honest judgment of a majority of the

" board," that the intangible, shadowy, unreal so-called capital stock of the company, or its franchise, or both combined, were worth any such enormous and exorbitant sum ? worth largely more than half as much again as all the tangible possessions of the company of every kind and character, including railroad track and rolling stock, and lands and lots other than railroad track, and personal property other than rolling stock? The Supreme Court of Illinois has answered all these questions. In the case of *Chicago, Burlington & Quincy Railroad Company* v. *Cole et als.*, that court said that the assessment was not the honest judgment of a majority of the board ; that it was an "arbitrary and unreasonable valuation;" that the board had gone "beyond its jurisdiction," and fixed "val- "uations through prejudice, or a reckless disregard of "duty, in opposition to what must necessarily be the judg- "ment of all persons of reflection," and that it was "the "duty of the courts to interfere, and protect the taxpayers "against the consequences of its acts."

The Attorney General concedes that this assessment is illegal, unjust, and that it cannot be sustained ; and then, in the face of the authorities which he has adduced to prove that the State Board is the only tribunal which can make an assessment, asks this court to take upon itself the performance of that duty; to make a new and different assessment of the capital stock of the company; and then to reverse the decree of the court below, and order the taxes to be collected, not upon the assessment of the State Board, but upon one it shall itself make.

His language is : "There was assessed, under the desig- "nation of 'capital stock,' $12,123,668; from which, upon "the authority of a recent decision of the Supreme Court "of Illinois, it is conceded there should be abated $3,- "240,300, by reason of the fact that the indebtedness of the

"leased roads was taken as a part of the debt of the princi-
" pal corporation.

" This leaves an assessment of valuation, under the desig-
" nation of 'capital stock,' of $8,683,368, which the State
" claims to be subject to taxation."

Now, let me ask, when this abatement shall have been made, and the value of the "capital stock" shall be declared to be $8,683,368, and not $12,123,668, whose assessment will it be? the assessment of the State Board, or the assement of the court? The State Board says the capital stock is of a given value. The court reviews the action of the board; says the board erred in its judgment; that the capital stock is not of the value reported by the board; fixes its value at a different sum, and directs the taxes to be levied on this new assessment. I ask again, whose assessment is it? Is it made by the board or the court?

If the Attorney General could show that, in making the assessment, the State Board had omitted some element of value which, in the opinion of the court, should have been considered, he could, with the same propriety, ask the court to increase the assessment more than $3,000,000; that he can ask it to decrease the assessment in that amount, because the State Board, in reaching its conclusions proceeded upon false premises. The court would have the same power and right to do the one as the other.

In the case of *The Republic Life Insurance Company* v. *Pollock*, cited by the Attorney General, (Tax Inj. Cases, 36), the Supreme Court of Illinois refers to the constitution of the State, which provides that "every person and cor-
" poration shall pay a tax in proportion to the value of his,
" her or its property, such value to be ascertained by some
" person or persons to be elected or appointed in such
" manner as the General Assembly shall direct, and not

" otherwise "; and then adds, " Thus it will be seen that " all power to fix a valuation is taken from each of the " departments of the government. It is unmistakably in- " vested in the persons elected under the requirements of " the statute, and it can only be fixed by them, and not " otherwise." And again, on page 37: " And if the " courts may hear evidence, and change the valuation fixed " by the officers elected under the law to perform that duty, " then it is the courts, who are not elected or appointed for " the purpose, who fix the value, and that would be to " make the valuation otherwise than is *peremptorily* re- " quired by the constitution."

And yet again, on pages 39 and 40: " And in pursu- " ance of their power under the constitution and law, they " have assessed and valued this property, and we are " powerless to change the valuation they have fixed; nor " can we examine the mode of reasoning, or the basis " adopted to ascertain the value of the property. It may " be illogical or even absurd, but that in nowise affects the " exercise of the power."

It is thus seen that the courts possess no power to change, alter or modify the valuation made by the State Board in any, the slightest particular, either to increase or diminish. If the assessment, as made by the board, be good, it is good in its entirety; if bad, it is bad *in toto.* The court must accept it or reject it as a whole. It cannot break it into fractions, and affirm one part and annul another.

While admitting the authority of this case, the Attorney General seeks to evade its force by stating propositions and citing authorities, which, however sound and true in themselves, I respectfully submit, have no application whatever to the question now before the court. His postulate is, that, " In courts where injunctions are granted " to restrain the collection of taxes illegally levied, it is the " settled rule that if it appears that only a part of the tax

" is illegal or unauthorized, the party seeking the injunc-
" tion must show by his pleadings and proofs the precise
" portion of the tax which is illegal, in order that the court
" may so frame its decree as to require the payment of so
" much of the tax as is equitably due, and only enjoin the
" collection of that part which is unjust."

It is not at all necessary that I shall controvert this, or deny that the proposition is sustained by the authorities to which he refers; but I do deny that they have any bearing upon the question now before this court. They have no relation to, or bearing upon, unauthorized and unlawful valuations or assessments, but deal only with the levy or extension of illegal and unauthorized taxes upon assessments which have been properly made. For instance, if a tax should be extended upon the assessment for the support of the churches of some denomination of christians, its collection would be enjoined because the tax would be illegal and unauthorized; but this would not enable the tax payer to enjoin the taxes which were extended upon the same assessment, at the same time, for the support of common schools, and maintenance of roads and bridges. In such case the bill would have to point out, specifically, the illegal tax, unless it was so blended with the lawful taxes that it could not be separated; in which case the whole levy would be vitiated. The bad element being so intermingled with the good as not to be separable, would contaminate the whole, and no part of the tax could be collected; but if the taxes were separately extended, so that each could stand by itself, the illegal would be enjoined without interfering with the collection of the lawful; but where the assessment itself is vicious, illegal and void, no taxes, either lawful or unlawful, can be extended or collected upon it.

In the case before the court the objection goes to the legality of the valuation or assessment. In all, except, I

think, one of the cases referred to by the Attorney General, the objections urged were to the levy or extension of taxes which were charged to be illegal, upon assessments to which no exception was taken.

Such is the character of the cases of:

Conway v. *Township Board*, 15 Mich., 263.
Palmer et al. v. *Township*, 16 Mich., 176.
Pillsbury v. *Auditor*, 26 Mich., 246.
O'Kane v. *Treat*, 25 Ill., 557.
Briscoe v. *Allison*, 43 Ill., 291.
Hersey v. *Supervisors*, 16 Wis., 186.

In *Merrill* v. *Humphrey*, 24 Mich., 170, the objection was to the assessment, the complaint being that the valuation was fraudulently made too high. The complainant was the owner of the property assessed, and liable to taxation upon its just value. The court held that they had no power to review and change the assessment; that the complainant was entitled to relief; but as he was the owner of the property, and admitted himself liable to his just proportion of taxes thereon, and offered to pay the same, he should pay within a reasonable time, such proportion of the tax assessed upon him, as he conceded to be fair, and enjoin only the residue.

But, if it were conceded that the court could review the action of the State Board, snd change the "capi- "tal stock" assessment, and make a different valuation from that made by the board, upon what data is the court to act, and by what rule is it to be governed and guided in doing so?

There were at least three elements of value taken into consideration by the State Board, in estimating the value of the capital stock, which must be rejected. First, $5,-540,500 of bonded indebtedness of other roads. Second, $1,939,201 of shares of stock more than the company ever

issued. (See Record, bill 89.) Third, all the real estate of the company underlying the rails, viz: grading, culverts, bridges, ties, etc., which the Attorney General says were included in the capital stock assessment. (See Proceedings of State Board of Equalization for 1873, pp. 36, 38, 39, 41, 44, 148; and Brief of Att'y. Gen., pp. 16, 18.)

Now how much of the total assessed value of so-called "capital stock" did the State Board derive from these sources? Who can tell? And how much of the aggregate assessment is the court to abate when these factors shall be rejected?

The truth is, it is a matter with which the courts have no power to deal otherwise than to pronounce upon its legality or illegality.

The court can sustain or reject the assessment of the board as a whole, but it can go no farther. In the language of the Supreme Court of Illinois, there is no "power, expressed or implied, by which the courts can fix "a valuation, or review the action of the assessors. For "the courts to hear evidence and change the valuation "fixed by the assessors, would be in direct and palpable vio-"lation of the constitution; when those officers have acted, "it is final, and the tax payer must submit to the action of "the officer, who is clothed with the sole power to make the "estimate of the value, unless he can show it was fraudu-"lently made, or that property has been assessed not liable "to taxation, or the legislature has disregarded or trans-"cended the principles of equality, or where a tax has "been levied when not authorized by law."

What pretense or semblance of authority can be found, either in the constitution or laws, to justify the State Board in declaring a large proportion of the real estate of the company to be capital stock, and assessing it, under that designation, at purely visionary and arbitrary rates.

If the State Board may declare all the tangible property of the company underneath the rails, to wit: grading, ties, culverts, bridges, etc., "capital stock," and refuse to value it for taxation, as other property is valued, but make an arbitrary assessment of it, under the name of capital stock, at an enormous and astounding amount, why may it no deal in the same way with all the property of railroad companies, real and personal, and withdraw the whole of it from the wise, just, and equitable rule of the constitution of uniformity and equality of assessment and taxation by valuation?

The constitution demands that taxation shall be "by "valuation, so that every person and corporation shall "pay a tax in proportion to the valuation of his, her, or its "property."

The assessment of tangible property for taxation in any other way than by a valuation of the property itself, is in violation of the constitution, in disregard of the law, and absolutely null and void.

Yet in this case the State Board confessedly declined to assess a portion of the tangible property of this company by valuation, but blended and combined it with incorporeal, intangible things, incapable of valuation, and then made an arbitrary assessment of the whole, without distinguishing between the different parts.

If this proceeding shall be sanctioned and sustained by the courts, there will be but little security for railroad property in Illinois.

But it cannot be sustained. In reference to the assessment against this same company for 1873, made by the same State Board of Equalization, under the same law and rules, and upon the same basis of valuation, the Supreme Court of Illinois has already said that it was not the honest judgment of the board; that it was arbitrary and unreason-

able; that the board had gone beyond its jurisdiction; that it had fixed valuations through prejudice or a reckless disregard of duty, and that it was the duty of the courts to interfere and protect tax payers from the consequences.

With one more suggestion, I close this argument.

The grading, ties, culverts, bridges, etc., were omitted, as the Attorney General has shown, in the valuation and assessment of the tangible property of all railroad companies, to be included with the capital stock, and assessed under that description.

There were then twenty-two railroad corporations in the State, not assessed for taxation on their capital stock, and which were, therefore, by deliberate and intentional action of the State Board, wholly and totally exempted from taxation, upon all that description of their property underlying the rails, including bridges and culverts.

The taxes which these favored corporations should have paid upon this large amount of their visible, tangible property, were, consequently, necessarily added to the burdens of the other tax payers. It can hardly be denied that this is so gross a departure from the rule of uniformity and equality, as to taint the entire capital stock assessment with fraud, and to entitle the appellees to relief.

O. H. BROWNING,

For Appellees.

IN THE

Supreme Court of the United States,

No. 703,

OCTOBER TERM, A. D., 1875.

HERMAN LIEB ET AL., APPELLANTS,

—VS.—

HENRY P. KIDDER AND DANIEL P. STONE, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS.

ARGUMENT FOR APPELLEES.

WIRT DEXTER, for Appellees.

Beach, Barnard & Co., Legal Printers, 98 Randolph Street.
1876.

IN THE

SUPREME COURT OF THE UNITED STATES,

No. 708,

OCTOBER TERM, A. D., 1875.

HERMAN LIEB ET AL., APPELLANTS,

—VS.—

HENRY P. KIDDER AND DANIEL P. STONE, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS.

ARGUMENT FOR APPELLEES.

WIRT DEXTER,

FOR APPELLEES.

CHICAGO:

BEACH, BARNARD & CO., LEGAL PRINTERS, 98 RANDOLPH STREET.

1876.

ARGUMENT.

The appellees, citizens of Massachusetts, and holders of bonds and stock of the Defendant Company—the Chicago, Burlington and Quincy Railroad Company—an Illinois corporation, brought their bill in the United States Circuit Court for the Northern District of Illinois, to enjoin the collection of what is known as the capital stock tax, which was laid for the year 1874, by the State Board of Equalization of Illinois, upon more than twelve million dollars of so-called capital stock, by direct assessment against the rail road company; the validity of which tax is the sole question before this Court.

The tax was laid by the State Board of Equalization of Illinois, under an authority supposed to be conferred upon that body by a law of Illinois, approved March 30th, 1872, the material portion of which for this discussion, is as follows:

"SEC. III. 4th. The capital stock of all companies and "associations now or hereafter created under the laws of this "State, shall be so valued by the State Board of Equalization "as to ascertain and determine, respectively, the fair cash value "of such capital stock, including the franchise, over and above "the assessed value of the tangible property of such company "or association." (Record, p. 16.)

It also appears that said State Board of Equalization, at its annual meeting for the year 1874, passed the following, (Record, pp. 16 and 17):

"*Resolved*, That for the purpose of ascertaining the fair cash "value of the capital stock, including the franchise, of all com- "panies and associations now or hereafter created under the "laws of this State, and for the assessment of the same, or so

" much thereof as may be found to be in excess of the assessed " or equalized value of the tangible property of such companies " and associations respectively, we, the State Board of Equali- " zation, hereby adopt the following rules and principles, viz :

" *First.* The market or fair cash value of the shares of " capital stock, and the market or fair cash value of the debt, " (excluding from such debt, the debt for current expenses), " shall be combined or added together, and the aggregate " amount so ascertained, shall be taken and held to be the fair " cash value of the capital stock, including the franchise, " respectively, of such companies and associations.

" *Second.* From the aggregate amount ascertained as afore- " said, there shall be deducted the aggregate amount of the " equalized or assessed valuation of all the tangible property, " respectively, of such companies and associations, (such equal- " ized or assessed valuation being taken, in each case, as the " same may be determined by the equalization or assessment of " property by this board), and the amount remaining in each " case, if any, shall be taken and held to be the amount and fair " cash value of the capital stock, including the franchise, which " this board is required by law to assess, respectively, against " companies and associations now or hereafter created under " the laws of this State."

It will not be disputed that the capital stock assessment was made as follows :

The amount of the shares of stock and bonds of the rail-road company, at their reported market value, were added together; from their sum, the tangible property was deducted, and the balance was assessed against the company as capital stock.

Defendant Company, for the year 1874, paid the usual taxes upon nearly eight millions valuation, being all of its tangible property, and which was assessed at the same rate as the property of all other citizens of the State of Illinois, and at the same rate as the tangible property of all other railroads. There

was a further tax at the property rate assessed against said company, upon over twelve millions valuation, called capital stock tax. (Record, p. 80.)

It further appears from the record in this case, (page 80, Report State Board for 1874), that no assessment was made against twenty-two railroads within the State of Illinois, for capital stock tax.

It also appears that by the contract of charter, made in 1849 and 1852, between Defendant Company and the people of Illinois, it was provided, among other things, (Record, page 22), that the corporation is authorized to prescribe "the rate of toll "for the transportation of persons and property thereon, as may "be suitable to their interests," also that "the Board of Directors "shall have power to establish such rates of toll for the con- "ance of persons and property upon the same as " "time to time, by their by-law "collect the same for the use

Also, (Record, page 38): " "ized, from time to time, to b "may be necessary for complet "their said railroad, and to issue "any amount so borrowed, and "property and franchises, or " "trust, to secure the payment of " "company, for the purpose aforesaid, and the directors of said "company may make the bonds issued as aforesaid, convertible "into stock, at the option of the holders thereof, at any time "not exceeding ten years from the date of such bonds."

At the time these charters were granted, there was no constitutional or legislative reservation of power over the railway company, so that by the contract of charter, the corporators became clothed with the unqualified right to collect such rates of toll for the carrying of passengers and freight as they might deem best.

The Constitution of the State of Illinois of 1848, and which was in force when the charters above referred to were granted,

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Also, (Record, page 38): "Said company is hereby author- "ized, from time to time, to borrow such sum of money as "may be necessary for completing and finishing or operating "their said railroad, and to issue and dispose of their bonds for "any amount so borrowed, and to mortgage their corporate "property and franchises, or convey the same by deed of "trust, to secure the payment of any debt contracted by said "company, for the purpose aforesaid, and the directors of said "company may make the bonds issued as aforesaid, convertible "into stock, at the option of the holders thereof, at any time "not exceeding ten years from the date of such bonds."

At the time these charters were granted, there was no constitutional or legislative reservation of power over the railway company, so that by the contract of charter, the corporators became clothed with the unqualified right to collect such rates of toll for the carrying of passengers and freight as they might deem best.

The Constitution of the State of Illinois of 1848, and which was in force when the charters above referred to were granted,

in Article IX., Section 5, provides that "taxes must be uniform in respect to persons and property."

Also in Article IX., Section 2, that "every person and "corporation shall pay a tax in proportion to the value of his or "her property."

This state of facts raises a Federal question.

Drawing the provisions of the railway charter and the Constitution of Illinois together, and we have a contract to the effect that the railway company shall be permitted to enjoy such tolls as it could agree upon with its patrons, subject to such general taxation as might be imposed by the Legislature of Illinois, provided it was uniform and proportionate in its character.

This contract, became, by virtue of the Constitution of the United States, superior to the power of the State Legislature, and under the protection of the tenth section of the first article, which provides that no State shall pass any law impairing the obligation of contracts, could not be invaded by any subsequent legislative action.

Uniform and proportionate taxation became as much a part of the contract as the right to take tolls, and quite as important.

The result is obviously the same to these appellees, whether the Legislature invades the right originally conferred to collect tolls, or confiscates the tolls by exceptional and ununiform taxation, after the railway company has collected them.

Nothing is found at that period either in the Constitution or the laws of Illinois, or in the charter granted to Defendant Company guaranteeing any particular rate of taxation; this, of course, must depend upon public necessities.

But a contract was made between the State of Illinois and Defendant Company, by which the company was invested with the absolute right to fix and enjoy its own tolls, subject only to that fundamental exercise of sovereignty by the State in imposing such taxes as might be found necessary in the support of government, and which, if by valuation, must be spread equally upon all property within her borders, and if by excise, must be uniform as to the class. Nor can it be said that any presump-

tions are to be indulged against this construction, as being in abridgment of the right of taxation by a State. The argument is the other way. The construction, we maintain, places the power to tax upon the only ground that can ensure obedience. Every presumption is to be made against exceptional taxation.

We need cite no authority upon the point that the State had the right to contract with the railway company for uniform and proportionate taxation. The power of a State over this subject, even to the extent of total exemption from taxation, was recognized by this Court in *State of New Jersey* v. *Wilson*, 7 Cranch, 164.

In *Von Hoffman* v. *The City of Quincy*, 4 Wallace, at page 550, this Court say: "It is also settled that the laws which sub-"sist at the time and place of the making of a contract where "it is to be performed, enter into and form a part of it as if they "were expressly referred to or incorporated in its terms."

In that case a statute of Illinois had authorized a municipal corporation, the city of Quincy, to issue bonds, which were bought and paid for. Under an existing law, power was conferred upon the city to collect a tax sufficient to pay the annual interest upon any bonds thereafter issued.

A subsequent statute restricted the general power of taxation to a certain per cent., and this second statute was held to be a nullity. The value of the contract had been, in the language of Mr. Justice WOODBURY, in 6 Howard, 327, "diminished by "legislation," hence the subsequent law was pronounced void. The power to issue bonds was not interfered with, but the right of the holders of the bonds was put in jeopardy by the second statute, hence it was held to be void.

The principle of these decisions is, that subsisting laws having relation to the subject of the contract, become a part of it.

The United States Circuit Court for the Western District of Wisconsin, in the Wisconsin Potter law railroad cases, said in relation to a general constitutional provision of the State of Wisconsin:

"In legal effect, therefore, there was incorporated in all the

" numerous grants, under which the North Western Railway " Company now claims its right of franchise and property in " this state, the foregoing condition, contained in the Constitution. " It became a part, by operation of law, of every contract or " mortgage made by the Company, or by any of its numerous " predecessors under which it claimed."

6 Chicago Legal News, 333.

Instructed by these rulings, appellees combine the clause in the Charters of the Defendant Company, giving them the right to collect such tolls as they may deem best, with the clauses at that time found in the Constitution of Illinois, providing that taxes must be uniform and proportionate in respect to persons and property, and they have a complete shield against the tax in controversy.

Indeed, without any Constitutional provision, guaranteeing uniform and proportionate taxation, the railway company would be entitled thereto by the terms of its charter.

The right to fix and enjoy its tolls would be of no value if they could be diminished or confiscated by exceptional taxation. The contract of charter itself pledged the good faith of the State of Illinois, that no such course should be pursued. If this be not so, then one of the contracting parties—the State—reserved a power which may be so exercised as to destroy the rights secured by the contract to the other party. But even if the power be retained, the State by inevitable implication of the contract has bargained not to exercise it.

In *Planter's Bank* v. *Sharp*, 6 Howard, at page 327, this Court say:

" One of the tests that a contract has been impaired is, that " its value has, by legislation, been diminished. It is not by the " Constitution to be impaired at all."

It is plain that by this taxation the stockholders' yearly revenue is diminished to the extent of the amount unjustly detained by the collectors of Illinois, as a capital stock tax.

The record (page 25) shows that there are fifty-eight rail-

roads in Illinois; that twenty-two railroads now exercising franchises, were entirely omitted from the capital stock tax; that forty per cent of the entire capital stock tax against railroads in Illinois for the year 1874, was assessed against the Defendant Company, although it operates but about one-tenth of the whole number of miles of railway in that State.

Suppose that instead of omitting twenty-two railroads out of fifty-eight, the State Board had omitted fifty-seven, and put the entire capital stock tax upon the defendant company. Is there no remedy?

If not, then the question so much debated, and upon which this Court has taken such high grounds, affirming the inviolability of charter contracts, becomes no longer important.

Why should any corporation struggle to maintain, unimpaired, its contract with the State, when the fruits of its contract can be so easily confiscated by the State? It is not the degree to which the ununiform taxation has already been pushed that demands our attention—although that is not inconsiderable in the case under discussion—but the principle which is involved.

The tax we resist cannot be sustained by this Court, without approving the right of the State to levy exceptional and unequal taxation. Let that become the law, and no contract of charter entered into by any one of the thirty-seven States of this Union is worth the paper upon which it is printed.

It is no answer to say that the rule adopted by the State Board is, on its face, of uniform application to all railroads in Illinois.

The real question is, whether the rule in fact proves to be of uniform application, and this is to be determined, not by its language but by its results.

All taxation results in a question of fact.

Appellee's case stands precisely the same as though the Constitutional provisions forbidding all taxation not uniform and proportionate, were found in the railway charters, side by side with the grant of the right to take and enjoy tolls, which means

that taxation of this prohibited nature cannot be levied under any pretence, and that all laws accomplishing that end are void.

The tax in controversy is defended under the revenue law of Illinois referred to. If the tax be either ununiform or disproportionate, then that law is bad. If not by authority of that law, then the tax falls, having no authority whatsoever.

There can be no application in this case of the authorities cited by the Attorney General of Illinois, to the effect that accidental omission, or over or under valuation, will not vitiate the tax. The report shows that the rules complained of have been applied in Illinois for two years. They have been approved by the Supreme Court of the State, and, under these rules, there is no chance for correction of errors, or the exercise of the judgment of the assessors to any degree whatever.

The omitted railroads stand precisely the same as Defendant Company.

Whatsoever was omitted or included, in the case of Defendant Company, in making up the tangible property tax, was also done with all other railroads in Illinois. The omission was not an oversight. The case of every railroad was before the assessors, as appears by their report, (page 80.)

The facts are there recorded, which show that this was not done by mistake, but that the Board well knew that these other roads were exercising their franchises in the transaction of the customary business of railroads. Also, that they had exactly the same kind of property, whatever it was, that formed the basis of the twelve million dollars' capital stock tax against the Defendant Company; yet they adopted rules under which not a dollar of that kind of tax was put against them.

These rules have become the adjudicated policy of the State in taxing corporations—a fixed, unyielding measure. The case stands precisely as though the rules adopted by the State Board, combining the amount of the shares of stock and the amount of the debt, were found in the law of Illinois which authorized the capital stock tax.

They are rules which cannot result in uniform taxation of

railroad franchises; for it is plain that if the tangible property of a railroad happened to be greater in amount than the aggregate of its shares and debt, the franchise would escape taxation altogether, as in the case of the twenty-two railroads. Whereas, if the tangible property happened to be less than the amount of the shares and debt, the franchise may be valued at the enormous sum of twelve millions of dollars, as in the case of the defendant railroad.

Aside from the twenty-two railroads in Illinois, which under these rules entirely escape the capital stock tax, the proceedings of the State Board are instructive with reference to other railroads. For instance, at pages 70 and 80 of the report of the State Board for 1874, it appears that the Chicago and Northwestern Railroad Co., which operates 453 miles of railway in Illinois, was assessed on a valuation of but eight hundred and fifty-six thousand, nine hundred and twenty-nine dollars, capital stock tax. The same pages of the report also reveal the fact that the Chicago, Rock Island and Pacific Railroad Co., which operates 234 miles of road in Illinois, was assessed upon only two hundred and thirty-three thousand, nine hundred and thirty-six dollars, as capital stock tax; while from page 80 of the same report, it appears that the defendant railroad, which owns in Illinois but 365 miles of road, is assessed a capital stock tax upon a valuation of twelve million, one hundred and twenty-three thousand, six hundred and sixty-eight dollars.

It need hardly be said that no reference to the amount of the tangible property tax paid by these roads can explain this disparity, because, independently of the franchise tax, it was the duty of each road to pay upon its tangible property. This every citizen of Illinois did, and the amount of such tax depended only upon the amount of the tangible property, and under any fair and uniform system for taxing the franchise, it would be of no consequence whether the amount of tangible property was less or more. But the facts are unfortunate for even that defence, for at page 80 of the report for the year 1874 it appears that the valuation of the tangible property of the Chicago, Rock Island and Pacific Railroad Company was four

million, eighty-seven thousand, nine hundred and thirty-two dollars; of the Chicago and Northwestern Railroad Company five million, three hundred and seventy-four thousand, four hundred and sixty-one dollars; while the valuation of defendant company's tangible property was seven million, eight hundred and seventy-three thousand, eight hundred and ninety-seven dollars.

The Attorney General, in his brief, has cited many cases to the effect that the adjudication of the State court upon a State tax law will be followed by this Court. Those cases do not apply. The point we make is that the obligation of our contract is impaired by the law imposing this capital stock tax. To follow an adjudication of a State in relation to a prohibition upon its own power, contained in the Constitution of the United States, is to permit the State court to finally construe the Constitution of the United States.

In the case of *Ohio Life Insurance and Trust Company* v. *Debolt*, 16 Howard, at page 432, Mr. Chief Justice TANEY says: "It has been contended, on behalf of the defendant in "error, (the Treasurer of the State), that the construction given "to these acts of Assembly by the State courts ought to be "regarded as conclusive. It is said that they are laws of the "State, and that this court always follows the construction given "by the State courts to their own constitution and laws.

"But this rule of interpretation is confined to ordinary acts of "legislation, and does not extend to the contracts of the State, "although they should be made in the form of a law. For it "would be impossible for this court to exercise any appellate "power in a case of this kind, unless it was at libertyto in-"terpret for itself the instrument relied on as the contract be-"tween the parties."

We may also add that this question was not raised in the State court. The fact of the omitted railroads was not before that court in relation to the capital stock tax of 1873, which is found in this case as to the tax of 1874.

The Attorney General, feeling the absurdity of valuing the

franchise of defendant company at twelve millions of dollars, attempts to better his position by alleging in his answer that all property beneath the iron track, such as bridges, embankments and culverts, was excluded from the tangible property tax, and included in the capital stock tax. At pages 16 and 17 of his brief, he quotes the proceedings of the State Board to show that the board excluded all improvements beneath the iron, from the tangible property tax, and included them in the capital stock tax. He says :

" It thus appears that very large values, which undoubtedly " might with propriety have been assessed under the designa- " tion 'railroad track,' were in fact excluded from the assess- " ment under that designation."

He cites 44 Illinois, 248, to show that improvements beneath the iron have been held to be taxable as tangible property. We admit this.

The statement amounts to this, that the Board intentionally left out very large values of tangible property of all railroads in Illinois, as such values could be more conveniently included with the franchise in the capital stock assessment. Is not the conclusion irresistible that the twenty-two railroads, against which no capital stock assessment was made, escape not only all tax upon their franchise, but also all taxes upon " very large values " of tangible property, to wit, all their property beneath the iron ?

As to the value of the omitted franchises, the Supreme Court of Illinois, in the opinion supposed to sustain this law, says : " That every corporation possesses a franchise of some value, " can admit of no doubt." (See pamphlet filed, p. 14.)

Is this uniform and proportionate taxation ? Is this a tax of which it can be said that each citizen's tax bears the same proportion to the whole tax, that his property does to the whole property in the State? This condition of affairs is not apologized for as an omission, but defended as a system. And what is the defense ? It is, that this result was reached in obedience to certain rules combining the debt and stock — in other words, that it was done.

Under the rules, the assessment of tangible property was divided into two departments. The personal property, such as rolling stock and iron rails, and lots aside from right of way, were first valued and distributed to the respective counties; and there the assessment of tangible property stopped until it could be ascertained whether the amount of the shares of stock and the debt exceeded the amount of the tangible property already reached. If so, the assessment proceeded to the valuation of the embankments, bridges and culverts. But on the contrary, if the amount of the shares of stock and bonded debt, at their market value did not exceed the value of the property, first assessed, to wit, railroad track, rolling stock, &c., the assessment of tangible property never proceeded further. That is, the entire omission of large amounts of tangible property which the railroads did actually own, was made dependent upon the value of property which the railroads did not own — but which may be described as the creditors' property, in the form of liabilities of the company.

There can be found no decision of the Illinois courts sustaining such a wholesale exemption of property from taxation, but many condemning it.

In commenting upon the second section of Article nine of the Constitution of Illinois, of 1848, which provides "that every "person and corporation shall pay a tax in proportion to the "valuation of his or her property," the Supreme Court of Illinois, in the case of *Hunsaker et al.* v. *Wright et al.*, 30 Ills., 148, say:

"These provisions were manifestly inserted in the fundamental law for the purpose of insuring equality in the levy and "collection of the taxes, to support the government, whether "levied for State, county or municipal purposes. The design "was to impose an equal proportion of these burthens upon all "persons within the limits of the district or body imposing "them. Under these provisions, the legislature has no power "to exempt or release a person, or community of persons from "their proportionate share of these burthens. Not having such

" power themselves, they are unable to *delegate such power* to " these inferior bodies."

We ask if the State Board have not exempted twenty-two railroads from taxation upon property both tangible and intangible, which they at the same time valued against the Defendant Company at over twelve millions ?

In view of these facts, and the fondness of the Attorney General of Illinois for State authorities, we invite attention to the following remarks upon ununiform taxation, by Mr. Justice BREESE, in *Bureau County* v. *C., B. & Q. R. R. Co.*, 44 Ills., at page 238 :

" The question is before us in all its length and breadth: " Can a railroad company by any action of the corporate au- " thorities of a county, be required to pay more than its fair " share of taxes, as compared with those paid by individuals ? " Does the power exist anywhere to destroy the cardinal prin- " ciple of uniformity of taxation, so forcibly and prominently in- " sisted upon by the Constitution ? This is a great question, " affecting not only railroad corporations, but every property " owner and tax payer in the State.

" It seems to us there is something so monstrous in the prop- " osition as to be indefensible by fair argument.

" Regarding uniformity as the vital principle, the dominant " idea of the Constitution, where can the power reside to pro- " duce its opposite ? Where is the power lodged, in view of " this principle, to compel A to pay on his land or personal " property, of no more value than the same kind of property " belonging to B, forty per cent more taxes than are assessed " against B ? We affirm such a power nowhere exists; and if it " did, it would be so revolting in its exercise, to the lowest sense " of justice with which our species is imbued, as to justify any " and every lawful expedient for relief against it."

In reply to the suggestion in the Attorney General's brief, that the right to operate the leased roads enjoyed by Defendant Company, may form one basis of the capital stock tax, it is enough to say that the Supreme Court of Illinois have entirely

rejected these roads as an element in the computation of any tax against the Defendant Company.

C., B. & Q. R. R. Co. v. *J. J. Cole et al.*, p. 37 of pamphlet filed herewith.

A FURTHER OBJECTION to this tax is that it is a tax by valuation, and, to some extent at least, is laid upon property of non-residents, held beyond the borders of the State of Illinois, and under this point we shall show that it is not a franchise tax.

It will not be denied that the capital stock assessment was reached in the following manner:

Proportion of capital stock of C. B. & Q. R. R. Co. in Illinois, as ascertained by State Board.	$16,624,606.00
Bonded debt of C. B. & Q. R. R. Co. proper in Illinois.....	11,164,169.00
Bonded debt of roads leased by C. B. & Q. R. R., added by State Board.	5,540,500.00
	$33,329,275.00
Deduct 40 per cent.....	13,331,710.00
Leaving amount of capital stock and debt, as equalized with the aggregate assessment of the State, by deducting 40 per cent. of market or actual value.	$19,997,565.00
Deduct tangible property.....	7,873,897.00
Which is the assessed and equalized value of capital stock, as ascertained by the State Board of Equalization.	$12,123,668.00

The Constitution of Illinois designates two sources of revenue.

First. Taxation of property according to valuation under the first clause of Section one, Article nine:

" The General Assembly shall provide such revenue as may " be needful, by levying a tax by valuation, so that every person " and corporation shall pay a tax in proportion to the valuation " of his, her, or its property."

The second source of revenue designated is: Taxation of persons, companies, and corporations upon their business franchises and privileges, under the second clause of Section one of the same article: " The General Assembly shall have power " to tax peddlers, auctioneers, brokers, hawkers, merchants, com-

" mission merchants, showmen, jugglers, inn-keepers, grocery-
" keepers, liquor dealers, toll-bridges, ferries, insurance, tele-
" graph, and express interests or business, venders of patents,
" and persons or corporations, owning or using franchises and
" privileges, in such manner as it shall, from time to time, direct
" by general law, uniform as to the class upon which it oper-
" ates."

We think it can be made very clear that the tax in controversy is not an excise or tax upon franchises or privileges based upon the second clause of Section one of Article nine of the Constitution of Illinois.

In *Oliver* v. *Washington Mills*, 93 Mass., page 274, the Court say: " An excise, on the other hand, is of a different
" character. It is based on no rule of apportionment or equity
" whatever. It is a fixed, absolute and direct charge laid on
" merchandise, products, or commodities, without any regard
" to the amount of property belonging to those on whom it
" may fall."

In *Provident Institution* v. *Massachusetts*, 6 Wallace, at page 631, this Court say:

" Franchise taxes are levied directly by an act of the Legis-
" lature, and the corporations are required to pay the amount
" into the State treasury. They differ from property taxes as
" levied for State and municipal purposes, in the basis prescribed
" for computing the amount, in the manner of assessment, and in
" the mode of collection, and they are in lieu of all other taxation,
" State, or municipal. Comparative valuation in assessing prop-
" erty taxes is the basis of computation in ascertaining the
" amount to be contributed by an individual, but the amount of
" a franchise tax depends upon the business transacted by the
" corporation, and the extent to which they have exercised the
" privileges granted in their charter. Unlike as the two sys-
" tems are in every particular, it seems to be a work of super-
" erogation to point out the differences which are radical and
" substantial."

Also, at page 630: " The amount of the tax does not de-

" pend on the amount of the property held by the institution, " but it depends upon the capacity of the institution to exercise " the privileges conferred by the charter."

The capacity to exercise the privileges conferred by the charter exists with the twenty-two railroads omitted, and which are now doing business.

As evidence that this capital-stock tax was assessed by valuation, the law provides as follows (the italics in this brief are our own,) (Record, page 16) :

" The capital stock of all companies and associations now or " hereafter created under the laws of this State, shall be so " valued by the State Board of Equalization as to ascertain " and determine respectively the *fair cash value of such capital* " *stock*, including the franchise, over and above the assessed " value of the tangible property of such company."

The Board of Equalization resolved, (Record, pages 16 and 17,) " That for the purpose of ascertaining the fair *cash value* of " the *capital stock*, including the franchise, of all companies and " associations now or hereafter created under the laws of this " State, and for the assessment of the same, the following be " adopted :

" *First*. The market or *fair cash value of the shares of* " *capital stock*, and the market or *fair cash value of the debt*, " and the aggregate amount so ascertained, shall be taken and " held to be the fair cash value of " — what? The franchise ? By no means — but, of " the capital stock, including the fran- " chise."

Can this be claimed as an independent franchise tax? Is there any language here indicating that it was the purpose of the Board to take these items as a measure of the value of the franchise ? Such a construction is excluded by the declaration found in the assessment that it is not the franchise alone, but something else. How can this Court be asked to declare that to be purely a franchise tax which the board of assessors say was intended to be, and is, a tax covering capital stock.

Of what importance could it be to declare that the sum they had reached should "be taken and held to be the fair cash "value of the capital stock, including the franchise," if they meant the franchise, and nothing more ?

It would be as reasonable to say that a sum which the Board had declared should be taken, and held, to be the fair cash value of the tangible property, including the franchise, in fact meant that the tangible property was excluded, and nothing but the franchise included.

It is idle to talk about debts being the measure of a man's property, whether that property be a franchise, or anything else. They are usually the measure of his calamities; but even that absurdity is denied to the defenders of this tax, because the debt was itself assessed against the defendant company as property, and not as a measure of anything.

But the question is not what the State might do, as a measure of the value of the franchise, but rather what they have done, as an actual assessment of property by valuation.

It is not disputed that the State may adopt any rule for ascertaining the value of franchises, provided it does not violate the Constitutional provisions guaranteeing uniform and proportionate taxation. All rules must bear that test.

Table A, page 80, of the report of the State Board of Equalization, shows the actual fact of the assessment, and is headed as follows:

"Table A. Showing the assessment made by the State "Board of Equalization on the *capital stock* of railroads, accom- "panying and made part of the report of the Committee on "Assessment of *capital stock* of corporations."

Nothing here about a franchise. Then follow the various columns showing exactly how the assessment was made, and it will be found upon inspection that it was composed of two elements and no third—to-wit: the market value of the stock and the market value of the bonds. The actual assessment conveys no hint of a franchise tax. But to leave no doubt as to this tax being upon the stock and bonds by valuation—the

report shows—(p. 80)—that the aggregate of said stock and bonds was equalized by the same deduction of forty per cent. therefrom as from all other property by valuation, and that after deducting the amount of tangible property, the residuum—which was purely stock and bonds—was treated *as property*, and subjected to the same rate of taxation as the tangible property of railroads and all property of individuals in the State.

It is in fact a tax by valuation in absolute correspondence with all other taxes by valuation in the State of Illinois for that year.

In view of the enormous amount of the valuation upon which the capital stock tax was assessed against Defendant Company—being one and a half times greater than the entire property of its railroad—it would be charitable to suppose that the Board did not mean to estimate the mere privilege of being a railroad—not a priceless privilege now—at twelve millions, particularly in view of the indifference manifested by that body to such values in altogether omitting twenty-two railroads from any franchise tax.

In the Massachusetts and Connecticut State tax cases reported in the 6th of Wallace's reports,

Society for Savings v. *Coite*, 6 Wallace, page 594,
Provident Institution v. *Massachusetts*, 6 Wallace, page 611,

it will be found that the tax was not the usual rate generally assessed upon property, but an arbitrary sum fixed by the Legislature, having no relation to the valuation of the property, and it was pronounced by this Court to be a franchise tax; and precisely that point in the opinion of this Court distinguished them from the *Bank Tax, Case* (2 Wall., 208), in which the tax was held, and has since been recognized by this court to be a property tax. So important was this difference deemed that upon it the Bank tax from New York was declared illegal, and in the other cases the tax was sustained.

The counsel for the State in the *Bank Tax Case* urged that the tax was a franchise tax, but the Court said it was a tax by

valuation of certain property, and must therefore be held to be a tax upon the property specified, and that a law of New York, providing for "taxation on a valuation equal to the "amount of capital stock paid in" was the same as a previous law which enacted that "the capital stock of the banks of the "State should be assessed at its actual value," and that it was a property tax. What is the tax under discussion but a property tax on a valuation of the amount of the shares of stock and bonds?

The first paragraph of Section six of the Revenue Act provides that every person in Illinois shall list his shares of stock in all cases when the capital stock of the company is not assessed in this State; thus recognizing the fact that the capital stock tax was not only a valuation of property, but of property belonging to the *individual holders;* or otherwise, why, if assessed against the company, should the shareholders be exempt.

We have, therefore,

First. The language of the revenue law of Illinois;

Second. The resolutions of the State Board of Equalization;

Third. The recorded facts of the assessment;

all to the effect that this is a property tax by valuation.

Having a tax by valuation, let us see whose property is assessed. If we find certain property assessed at a valuation we conclude that the tax is upon the property valued.

The bonds are debts which are the property of the creditors, and so far as they are held by non-residents, it is an assessment against the railroad company of property beyond the jurisdiction of Illinois that it does not own, and which, as appears by the record, belongs, in part at least, to non-residents. The Courts of Illinois cannot say that debts of the company, by assessment to the company, become part of its property. This Court has said otherwise.

In the case of *Tappan* v. *Merchants' National Bank*, 19 Wallace, at page 499, the Chief Justice says: "The power of taxa-

" tion by any State is limited to persons, property, or business " within its jurisdiction."

In the case of "*State Tax on Foreign Held Bonds*," 15 Wallace, at page 320, this Court say:

" But debts owing by corporations, like debts owing by indi- " viduals, are not property of the debtors in any sense; they are " obligations of the debtors, and only possess value in the hands " of the creditors. With them they are property, and in their " hands they may be taxed. To call debts property of the " debtors, is simply to misuse terms. All the property there can " be in the nature of things in debts of corporations, belongs to " the creditors, to whom they are payable, and follows their " domicile wherever that may be. Their debts can have no lo- " cality separate from the parties to whom they are due." * * " The bonds issued by the railroad company in this case, are " undoubtedly property, but property in the hands of the hold- " ers, not property of the obligors. So far as they are held by " non-residents of the State, they are property beyond the ju- " risdiction of the State."

It thus clearly appears that property beyond the jurisdiction of the State, and not belonging to the company, was assessed against it. Nor is this fact to be escaped by calling it capital stock. The question is: What, in fact, was included in the assessment?

In any event, the injunction must be sustained.

In an opinion of the Supreme Court of Illinois, filed June 16th, 1875, in relation to so much of this capital stock tax as is based upon the debt of railroads leased by Defendant Company, the Court say: " But whenever the Board undertakes to go be- " yond its jurisdiction, or to fix valuations through prejudice, " or a reckless disregard of duty, in opposition to what must " necessarily be the judgment of all persons of reflection, it is " the duty of the courts to interfere, and protect tax payers " against the consequences of its acts."

We refer to the case of the *Chicago, Burlington & Quincy*

Railroad Company v. *J. J. Cole, et al.*, which was appealed by the railroad company and reversed. (See page 40, pamphlet herewith filed.) In the present tax there was included five millions, five hundred and forty thousand, and five hundred dollars debts of leased roads.

This was said in reference to the capital stock tax of the previous year, to wit: 1873, assessed under the same law and rules of the Board of Equalization as the tax now before this Court, and based upon the same element of the bonded debt of leased roads as is found in the present tax.

The remarks above quoted, very correctly portray the proceedings of the Illinois State Board of Equalization; but will somebody explain the difference between assessing against the Defendant Company a property tax by valuation based on the debts of other railroads, and the same kind of a tax based upon its own debts?

It has quite as much property and ownership in the debts of other people as in the debts it owes.

It was but an enlarged application of the same order of wisdom which led the Board, from taxing against the company its own debts, to the plan of finally including other people's debts.

We conclude that the tax is invalid for these reasons:

First. That the Board designedly, and by rule, omitted the franchises of twenty-two railroads, which exercise the same franchise as the Defendant Company, and which possess the same kind of property that was the basis of more than twelve million dollars valuation against Defendant Company.

That if the tax is held to be an excise tax upon the franchise, then it is bad, because not uniform as to class.

If the tax is held to be by valuation upon the franchise as property, it is bad, because not proportionate, other property of the same kind being exempted.

That aside from the franchises of twenty-two railroads, a large amount of their tangible property was exempted, being

the entire cost or value of all that portion of the railroad beneath the iron rail, including bridges, culverts and embankments, all of which items of property were assessed against the Defendant Company.

That taxation of this nature was prohibited by provisions found in the Constitution of Illinois, when the contract of charter was made, which provisions became a part of the charter.

Second. That the tax is not a franchise tax, but is a tax composed of enumerated tangible property valuations, and upon equalized amounts, and at property rates, omitting those who did not possess certain amounts of the supposed specified property, although they exercised the privileges. That it is a tax which included among other valuations sixteen millions of dollars of debts against the railroad company, not the property, but liabilities of the company, owned by residents and non-residents of Illinois; from which it appears that property which does not belong to the company, both within and beyond the State of Illinois, has been assessed against it.

Respectfully submitted.

WIRT DEXTER.

N. B. As the two opinions of the Illinois Court referred to are not reported, we have had them printed, and filed herewith.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

No. 703.

HERMAN LIEB, *et al.*

vs.

HENRY KIDDER *et al.*

REPLY TO ARGUMENT OF APPELLEES.

LYMAN TRUMBULL,
For Appellants.

Judd & Detweiler, Printers.

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For Appellants.

It is admitted that under the decision of the Supreme Court of Illinois, in the case of the C. B. & Q. Railroad Company *vs.* Cole *et al.*, Tax Injunction Cases, 43, decided June 16, 1875, and since the filing of the bill in this case, it was erroneous for the State Board of Equalization to take into consideration, in the assessment of the capital stock of the C. B. & Q. Railroad Company, the indebtedness of its leased roads; but the case decided by the Supreme Court of Illinois was very different from this.

In that case the bill alleged and the demurrer admitted, that in making the assessment of capital stock, the board of equalization, added to what "they determined the value of the capital stock, not only the indebtedness of the appellant,

(C. B. & Q. Railroad Company,) but also the indebtedness of the six other railroad companies of which it was lessee, one of which lies wholly without the State of Illinois, for the payment of none of which is appellant responsible nor is it interested therein as owner."

Tax Injunction Cases, 45.

In this case an answer was filed showing that the Board of Equalization had before it the original annual report made to the Auditor, (see Printed Record 66,) and sworn to by the officers of the railroad company, stating *its* indebtedness at $16,704,669.18, no part of which is stated to be the indebtedness of leased roads, for which the C. B. & Q. Railroad Company was not responsible.

How was the Board of Equalization to know that any part of the indebtedness returned by the C. B. & Q. Railroad Company as its own, was the indebtedness of some other company?

This report was the annual sworn statement made to the auditor in pursuance of section 48 of the revenue law, and was the one, and only one, which the board of equalization was required to consider in making its assessment of capital stock. Subsequently, August 18, 1874, the Railroad Company made a communication to the State Board of Equalization (see Exhibit B, Printed Record, 49) in which the bonded debt of the Company is stated to be $16,721,044.53, instead of $16,704,669.18, as stated in the annual report.

Still later, September 7, 1874, the Railroad Company makes another communication to the Board of Equalization, in which it is claimed that its statement made to the auditor for the purpose of taxation of capital stock is erroneous, and that $5,540,500 of the reported bonded indebtedness of the C. B. and Q. Railroad Company is the indebtedness of other companies which the C. B. and Q. Railroad Company is not bound to pay. What was the Board of Equalization to do with those various communications before it? The

official sworn report of the Company stating one sum as the indebtedness of the Company, a subsequent communication stating a larger sum, and a still later one a less sum, was not the board justified in acting upon the official report it first received, and in disregarding the unofficial and contradictory communications subsequently made to it?

Shall a railroad company escape taxation of its capital stock altogether as claimed in this case, by taking advantage of its own wrong in making various reports and misleading the Board of Equalization? If the Board of Equalization made a mistake in taking into consideration the bonded debt of the leased roads in this case, it was a mistake into which they were led by the acts of the railroad company itself, and not as in the case of the C. B. and Q. Railroad Company *vs.* Cole, where the demurrer admitted that the board willfully took into consideration, in assessing the capital stock of one road, the bonded debt of other roads, one of which was situated in another State. There the State Board of Equalization acted knowingly and willfully upon admitted facts; here the board acted upon the sworn official report of the officers of the company interested, which it was justified in assuming to be true, notwithstanding the subsequent unofficial communications, the truth of which it had no means of testing. But in that case the supreme court of Illinois remanded the case for further proceedings, which it would not have done if the including of the debt of the leased roads in ascertaining the value of the capital stock had been, as claimed in this case, fatal to the whole assessment.

In this case the record shows that the indebtedness of leased roads was taken into consideration by the Board of Equalization in assessing the capital stock, and although the assessment was made on the official sworn report of the officers of the corporation, the State has no desire to collect from the railroad company anything more than the taxes it legitimately owes. Hence the stipulation (Printed Record,

71,) which determines exactly what sum should be deducted in consequence of the mistake in including the sum of $5,540,000 bonded debt of other companies in the bonded debt of the C. B. and Q. Railroad Company.

But it is insisted that the assessment of the capital stock being confessedly erroneous, it is not in the power of the court to correct it, because it is the assessors alone, and not the courts, which are authorized to assess property for taxation, and that the assessment "is a unit, and the court must deal with it as a whole. It must *sustain* it *in toto*, or annul it *in toto*."

And the question is asked, "When this abatement shall have been made, and the value of the capital stock shall be declared to be $8,683,368, and not $12,123,688, whose assessment will it be—the assessment of the State board or the assessment of the court?" The answer is obvious. If parties agree, as they have in this case, that a certain amount of the "capital stock" assessed for taxation against a corporation does not belong to the corporation, but to somebody else, and that such amount shall be deducted from the assessed value of the capital stock which does belong to the corporation, it leaves the balance as the assessed value of capital stock made by the State board, as completely as if none other than such balance had been originally assessed. Because the courts may not alter, modify, or revise assessments, it does not follow that they may not declare an assessment void; and the declaring of so much of an assessment invalid, as by the admission of the parties arises from the assessment of property not belonging to the party assessed, by no means affects the assessment arising from property that does belong to it.

If the assessment of the capital stock was entire, and so blended together that the part belonging to the defendant railroad company could not be separated from that belonging to other companies, there might be force in the objection; but such is not the case here. It appears by the

record and the agreement of the parties exactly how much of the capital stock assessed to the defendant company belongs to it. The principle on which the capital stock of a railroad corporation is assessed measures its value by the value of the shares of its stock and its bonded indebtedness, less its tangible property, as defined by the revenue act.

The term capital stock includes the franchises and all other property of the corporation, such as grading, &c., which is not denominated tangible property by the revenue act.

Hence the excess in value of the shares and bonded indebtedness represents all these elements which go to make up the value of the capital stock, and by as much as the value of the capital stock in this case was enhanced by adding the value of the bonded indebtedness of other companies to that of the defendant company, by so much it was assessed on account of capital stock it did not own; and as this amount is agreed upon, it may properly be stricken from the assessment of the capital stock which the defendant company does own, which will be left to stand, as the State board has fixed it without modification or change, and upon this amount the company is liable to be taxed, if a capital stock tax of any amount can be collected from it under the law.

II.

The term "capital stock" includes the franchise of the company as well as all its other property not designated "tangible property" by the statute. This is apparent from clause 4 of section 3 of the revenue act, which requires the "capital stock" to be so valued as to determine its "fair cash value, including the franchise over and above assessed value of the tangible property."

Again, the State board is required to adopt rules "for ascertaining the fair cash value of *such* capital stock;" that is, the capital stock, including the franchise, &c.

The resolution of the board is "for the purpose of ascertaining the fair cash value of the capital stock, including the franchise," &c. It was unnecessary for the board, every time it used the term "capital stock," to define its meaning, when that had already been done in the statute and in the resolutions of the board for the assessment of the capital stock.

III.

It is admitted that the C. B. and Q. Railroad Company is not liable under the statute to assessment for taxation upon its shares of stock and bonded indebtedness. The law expressly provides that "in all cases where the capital stock of any company or association is assessed under this act, the *shares* of capital stock of any such company or association shall not be assessed." No assessment for taxation has been made by the State board on the shares of stock and indebtedness of the C. B. and Q. Railroad Company, and all that is said in argument about such an assessment may be at once dismissed from the case. What the State board has assessed is the "capital stock" of the C. B. and Q. Railroad Company, by which is meant its franchise and all its other property not included in the term "tangible property," as used in the revenue act.

In order to ascertain the value of its "capital stock" thus defined, the State board made inquiry as to the value of the shares of stock and of the bonded indebtedness of said railroad company, assuming, as is undoubtedly true, that the sum of such values would equal the value of the entire property of said railroad company of every kind and description, including its franchise. From the value of the entire property of the railroad company thus ascertained the board deducted the aggregate value of all its property previously assessed as "tangible," and left the balance to represent under the term "capital stock," the value of the "franchise" and other property not denominated "tangible."

The argument for appellees demonstrates, if such a position needed demonstration, that shares of stock in a corporation belonging to stockholders, and bonds of a corporation belonging to the holders of the same, are not the property of the corporation, nor do they constitute the capital stock of the corporation, which is an entirely different thing from shares of stock or the indebtedness of the corporation. It would doubtless be competent for the general assembly to tax the shares of stock, and the bonds of a corporation in the hands of the holders of them, so far as such holders are within its jurisdiction. It has not thought proper to do so, but it has thought proper to tax the capital stock of corporations, which is all that has been done in this case.

The distinction between "capital stock" and "shares of stock" is fully recognized by Mr. Browning, on page 36 of his brief, and the former is admitted to be the property of the corporation.

Having made this admission, it is somewhat singular that he should insist that an assessment of "capital stock" is an assessment of "shares of stock."

IV.

The supreme court of Illinois having decided in an elaborate opinion, and after the fullest consideration, every point raised in this case adversely to the appellees, Mr. Browning seeks by argument to draw a distinction between the case of Porter *vs.* R. R. I. and St. Louis Railroad Company and this. On page 37 of his brief he says: "The R. R. I. and St. Louis Company complained of the assessment of *its* capital stock, it was complaining of the assessment of its own property." That is precisely what is complained of in this case. On page 17 of the printed record, appellees in their bill allege "that the said Board of Equalization then proceeded to assess the value of the capital stock of said company;" and after stating the manner in which this was

done, proceeds as follows: "Leaving the amount at which said company (the Chicago, Burlington and Quincy Railroad Company) was assessed for taxation in the State of Illinois $12,123,668, under the designation of and *as* capital stock, which is an amount in excess of any property belonging to said company, and upon which said company cannot therefore be justly required to pay taxes."

How, with these allegations in the bill of appellees, their counsel can insist that "no complaint is made here in respect to the assessment against the Chicago, Burlington and Quincy Company, upon its own property and capital stock," passes comprehension.

In the case of the Rockford, Rock Island and St. Louis Company it was insisted, as it is in this by the Chicago, Burlington and Quincy Railroad Company, that it was the shares of stock and indebtedness of the company, and not its "capital stock," which was assessed; but the supreme court of the State said: "In the view we have taken of the case, the Board of Equalization assessed the value of the capital stock, including the franchise, over and above the assessed value of the tangible property, and did not assess the shares of stock belonging to the stockholders or debts of the corporation."

Again, counsel say, page 41 of brief: "Taking them (the shares of stock and debts) into consideration as the basis of the assessment was" in the language of the court "a clear violation of the duty imposed on the board." With deferance to counsel, the Supreme Court of Illinois has said no such thing, but what it did say was, that to assess the corporation "upon the value of the debts which it owes," would be a clear violation of duty. And the court in its opinion *passim* argues to show that taking into consideration the value of the shares of stock and bonded indebtedness of the corporation, for the purpose of ascertaining the value of its capital stock, is one mode of ascertaining the value of the "capital stock," which is approximately correct, and is no violation of duty.

In fact every question raised in this case has been fully considered and passed upon by the Supreme Court of Illinois in the cases of Porter *vs.* The R. R. I. & St. L. R. R. Co., and of The Republic Life Insurance Company *vs.* Pollock, and those decisions are decisive of this, unless this Court is prepared to depart from its own well-settled principles and overrule decisions made by the highest tribunal of the State in the construction of its own constitution and laws.

V.

Counsel say: "The General Assembly has passed no general law uniform as to the class upon which it operates directing the manner in which persons and corporations shall be taxed for the ownership or use of franchises and corporations."

The Supreme Court of the State say:

"It surely cannot be doubted that the law requiring that the Board of Equalization shall ascertain and determine the fair cash value of the capital stock, including the franchise, of all companies and associations now or hereafter created under the laws of the State, over and above the assessed value of the tangible property of such company or association, is a general law, or that it is uniform as to the class upon which it operates. It is not restricted to any particular part of the State, nor is it limited to a special tax, it extends to the entire State, for the purpose of general taxation, and it applies the same rule to all within the class upon which it operates, namely: the corporations now or hereafter created under the laws of this State. It is not required, as seems to be thought by some of the counsel, with whose arguments we have been favored, that the Legislature shall, in providing for the taxation of corporations, under the last clause of the section referred to, designate the precise amount which the corporation shall pay, and that this shall be the same on each corporation, without regard to the value of the franchise or privileges enjoyed, nor that such taxation shall be

of like character with that which may be imposed on innkeepers and others pursuing the particular vocations named; it is only required that *they shall be taxed in such manner as the General Assembly shall from time to time direct by general law;* and the only *uniformity required is as to the class* upon which such general law shall operate. It is, therefore, left entirely to the Legislature to determine whether corporations shall be taxed only on their tangible property, on the amount of their gross receipts, or, as in the present instance, on the value of their tangible property, and on the fair cash value of their capital stock, including their franchises, over and above the assessed value of their tangible property, subject merely to the limitation that it shall be directed by general law, uniform as to the class upon which it operates.

Tax Injunction Cases, 17.

At every point of their argument counsel for appellees are met by the decisions of the supreme court of the State, without overturning which it is impossible for them to succeed.

LYMAN TRUMBULL,
For Appellants.

Attach 4. 10703 Judge Davis

IN THE

Supreme Court of the United States.

No. 703,

OCTOBER TERM, A. D. 1875.

2-5776-

HERMAN LIEB ET AL., APPELLANTS,

—VS.—

HENRY P. KIDDER AND DANIEL P. STONE, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

SUPPLEMENTARY BRIEF FILED AFTER ORAL ARGUMENT,

By WIRT DEXTER, for Appellees.

McGILL & WITHEROW, Printers, 1107 E Street, Washington, D. C.

1876.

Supreme Court of the United States.

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vs.

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No. 703.

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The position that the clauses found in the constitution of Illinois at the date of our charter providing equal taxation became part of our contract with the State, and is now beyond the reach of the State, is assailed by reference to the cases of—

The Delaware R. R. Tax, 18 Wall., 206.
Erie Railway Co. *v.* Pennsylvania, 21 Wall., 492.
North Miss. Railroad Co. *v.* Maguire, 20 Wall., 46.

These cases merely hold that the intention of the State to forego or limit its power of taxation will not be presumed and must be clearly expressed. That portion of the constitution of Illinois which we invoke as part of our contract is unequivocal. The contract we claim is not specially for our advantage. It is the contract of equal taxation, important to all citizens. It is found in the constitutions of most of the States; it inheres in the nature of all. Equal taxation must be a condition of every State based on equal rights.

Senator Trumbull asks if the State may not change her

method and rate of taxation? Most certainly she may. We do not claim that our contract with the State called for any particular rate or method of taxation. The necessities of a State may require a measure of taxation that would render all property within her borders comparatively worthless. It is not claimed that there is any limitation upon its extent—none was expressed in the contract—provided only it be proportionate if by valuation, and uniform as to class if by excise.

The Revenue Law of Illinois for 1872 provides that the rules of the State Board "shall be as binding as if contained in this act." Now, these rules, when applied, do in fact exempt more than one-third of the railroads in Illinois from the special tax levied on railroads. This has not been done by mistake or accident, but is a designed exemption of a large amount of property from the common burdens. It was done by rule, and these rules have now become the adopted policy of the State, which admits of no correction of errors, for it is denied that any have been committed.

This contract of equal taxation is our security and title to the property we own in Illinois. It is a portion of the law which created us, and is the most valuable expression of our legal existence.

Now, as to the question of fact whether property has been exempted, this court can go no further than the proceedings of the State Board which constitute the assessment, and these proceedings announce the fact that, whilst the State Board was in session, it advised with the State Auditor as to the propriety, in the assessment of all railroads in Illinois, of including all that portion of the road beneath the iron in the assessment of tangible property.

The auditor responded that all that portion of the road could be better included in the capital stock assessment. The proceedings show that the board adopted this course.

It is distinctly averred in the answer that this course was

pursued. (See Record, case 703, at bottom of page 60.) It is affirmed in the brief of the Attorney General at page 17. This is all we know about it. We must conclude that it was done. Now, if all beneath the iron rail was left to be included in the capital stock tax, then it is absolutely certain that, as to the twenty-two roads against which no capital stock tax was assessed, all beneath the iron was exempted from taxation. There was no excuse for this; the grading, bridges, and culverts are built by estimate and job, and can be valued as well as any other part of the railroad property.

Mere convenience can be no apology for this wholesale exemption. If on that score the board thought it advisable to adopt a general measure of value, it was their duty to see that it was of general application.

It cannot be said that the omitted roads had no value. Take four of them as an illustration:

The Cario and Vincennes Railroad is 149 miles long, its assessed value of tangible property was	$653,000
The Rockford, Rock Island and St. Louis Railroad is 237 miles, its assessed value of tangible property	1,136,000
The Springfield and Illinois South Eastern Railroad 220 miles, with a tangible property valution of	927,000
The St. Louis and South Eastern Railroad 174 miles, with a tangible property valuation of	1,081,000
Giving on these four roads an assessed value of tangible property of	$3,797,000

See page 80, Report of the State Board for 1874, for amounts of tangible property assessed to these roads in next to the last column, on the page to the right.

See page 68 of same report for length of miles of first-named road. Page 75 for same information as to second

and fourth roads named. Page 76 as to third-named road.

Can it be possible that the iron rail, station houses, and rolling stock of these four railroads have an assessed value of three million seven hundred and ninety-seven thousand dollars, and that all beneath the iron is without value? Reverse the proposition, and suppose that the board had resolved that inasmuch as railroad iron, rolling stock, and station houses were perishable they would include the substantial portions of the road, its embankments, road bed, &c., in the assessment of tangible property, and leave the iron and station houses to be included in the capital stock assessment, and then, as to the twenty-two roads, that had never been subjected to any capital stock assessment, could it be maintained that large values of tangible property had not been exempted.

Such a pretence would be answered by the fact that four alone of the twenty-two roads have been found to have an assessed value of nearly four millions of tangible property. Yet the grading, bridges, road bed, of a road are worth vastly more than all besides.

Let it be remembered that the rules and proceedings of the State board must be taken together in order to ascertain the actual facts of the assessment. When this is done the error becomes apparent. The board should have taken all the tangible property of every road, or none of it, and not part, leaving the balance to depend upon a contingency which never happened, as to the twenty-two roads, namely, the assessment of a capital stock tax. And right here (in addition to the omission of the franchise tax,) is the inequality of taxation. These omitted values were assessed to defendant company under the name of capital stock tax, hence the adopted method of applying the rule, exempted from taxation in twenty-two cases a kind of property of undeniable value, common to all railroads and included it against defendant company.

As confirmatory of our view that large values have been exempted, are the facts that defendant company, with four

hundred miles of road, is taxed upon twenty million dollars, assessed valuation, eight million tangible property, and twelve million capital stock, and that these four railroads with over eight hundred miles have an assessed value of something less than four millions. This alone disposes the mind to expect evidence of large exemptions.

If this exemption from common burdens is to be approved, we hope the court will mark its boundaries, and tell us how far it may go and where it must stop. It is a question of great interest to non-residents who have invested large sums in Illinois on the faith of their contracts with the State.

It is not the degree of injustice or the description of persons to whom it has been applied, but the principle that is to be a guide in every State in our Union. This is an interesting and important question

The tax under discussion purports to be a capital stock tax on a valuation equal to the amount of the shares of stock and debt—these items are enumerated—and no other items are specified. Sixteen millions of bonds was notoriously taken into the assessment. We say that this debt was not the property of the defendant company, and hence property not belonging to the company has been assessed against it.

There has been no answer to this point. The decisions of this court are emphatic to the effect that where an assessment is made upon a valuation equal to the amount of certain items of property, then the tax must be deemed to be laid upon that precise property. This was so decided in the Bank Tax case, 2 Wall., 208, wherein it appeared that the Legislature of New York had provided that "the capital stock of the banks of the State should be assessed at its actual value" and at the same rate as all other property in the respective counties. A portion of the capital of the

banks was invested in Government bonds. The tax was held to be bad as being a property tax on forbidden property. The Legislature next subjected the banks to "taxation on a valuation equal to the amount of capital stock paid in." This court held that this was also a property tax on the property specified, and therefore invalid. In that case the property assessed happened to belong to the bank; in this case sixteen millions of bonds included in the assessment do not belong to the defendant company, but to the creditors who hold them.

The Bank Tax case, 2 Wall., is instructive on this point. The Supreme Court of New York decided the tax to be a franchise tax, and it was defended as such in this court; but this court said you cannot assess specific property by valuation at the property rate and then ask us to sustain it as a franchise tax.

Under that decision the tax in controversy must be held to be a property tax on the property specified, which makes it void as being on property not belonging to the company and beyond the jurisdiction of the State of Illinois.

See cases already cited.

Tappan *v.* Merchants' National Bank, 19 Wall., 499.

State Tax on Foreign Held Bonds, 15 Wall., 320.

The Massachusetts and Connecticut tax cases, reported in 6 Wall., exhibit the difference between a franchise and property tax.

In Society for Savings *v.* Coite, 6 Wall., 584, the tax was one-quarter of one per cent. on the amount of deposits of the bank.

In Provident Institution *v.* Massachusetts, 6 Wall., 611, the tax was one-half of one per cent. on the amount of deposits.

In Hamilton Company *v.* Massachusetts, 6 Wall., 632, the tax was one-sixth of one per cent. on the market value of the stock. All these this court said were proper measures of a franchise tax not being a property tax by val-

uation at the property rate, but an arbitrary rate fixed by the Legislature.

No case has been cited, and none can be found where this distinction has been violated. I have examined all the cases referred to by the Attorney General and Senator Trumbull. It is impossible to refer to them in the short time allowed, but they will all be found to be cases where the various methods adopted were for the avowed purpose of measuring the value of the franchise, and nothing else. And in no case have the courts allowed a confusion of property and excise taxes in the same tax, but have held that in all cases where specific property is assessed by valuation it is a property tax on *that property*. Now, among the property specified is sixteen millions of bonds, which the courts of Illinois cannot say belong to defendant company, because much of it is held outside of the State and beyond her jurisdiction.

Respectfully submitted,

WIRT DEXTER.

Heard 4-2-5.75 for Def

IN THE

Supreme Court of the United States.

No. 703,

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HERMAN LIEB ET AL., APPELLANTS,

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

SUPPLEMENTARY BRIEF FILED AFTER ORAL ARGUMENT,

By O. H. BROWNING, for Appellees.

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The counsel of the appellant claim that there is not a point made in this case which has not already been decided by the Supreme Court of Illinois adversely to the appellees.

This claim would hardly have been made if the counsel had examined and comprehended the allegations of the bill, the admissions of the answer, and the exhibits and proofs.

In no one of the cases arising under the revenue laws of Illinois have any of the following propositions, which are among the most material and important in the case, been presented, considered, or decided:

1. The intentional exemption of twenty-two railroad corporations from any assessment whatever for and on account of capital stock and franchises, or either of them.

2. The intentional exemption of twenty-two of the railroad corporations of the State from any assessment whatever for their tangible property underlying the rails, including bridges, culverts, &c.

3. The deliberate refusal of the State Board of equalization to assess any of the railroad companies on their tangi-

ble property underlying the rails, including bridges, culverts, &c., by valuation as property, as required by the constitution and law; and arbitrarily assessing it under the description of capital stock, without any valuation of the property itself.

4. The unjust, unreasonable, arbitrary, and fraudulent imposition of 40 per cent. of the entire capital-stock assessment of fifty-eight railroad corporations in the State, which own and operate nearly six thousand miles of railroad upon the Chicago, Burlington and Quincy Railroad Company alone, which owns and operates, under its own charter, only about four hundred miles of railroad.

All these things, we maintain, are in gross violation of the constitution and laws of Illinois, in sharp conflict with the spirit of all the decisions of the Supreme Court upon the revenue laws, and none of which have been brought to the attention of the courts of Illinois, or considered or decided by them.

We respectfully ask the attention of the court to the fact that the Chicago, Burlington and Quincy Railroad Company is not seeking by any technical objection to evade the payment of its just proportion of the revenues of the State.

It has been assessed exceptionally high upon the whole of its property to the uttermost farthing, and has paid its taxes thereon without complaint and without stopping to inquire whether the assessment had or not been made with technical accuracy.

The property upon which it has thus been assessed, and upon which it has paid its taxes, is, as the Supreme Court of Illinois has expressly decided, its capital stock. It has, therefore, paid its taxes upon the whole of its capital stock. And yet it is assessed a second time, as and for capital stock, in a sum exceeding $12,000,000, the basis of which second assessment is its own debt, the debt of other corporations, and the *shares of stock as valued in the hands of the shareholders*, as admitted by the answer.

The theory of the State Board of Equalization, and of the counsel for appellant, is, that the company must have property equal in value to the aggregate par value of the bonded debt and the shares of stock combined.

But this is a fallacy. It is a fallacy in all cases, and shown to be utterly untrue in this.

The bill alleges, and the answer admits, that every dollar borrowed upon its bonds and mortgages, and derived from the sale of its shares of stock, had been expended by the company in the construction and equipment of the road and its appurtenances, and that, besides its tangible property, upon which the taxes have been paid, it owned nothing whatever except its naked franchise—its charter—which is just like the charters of all the other railroad corporations in the State.

This being so, how can this second assessment be upheld? No plainer case of double taxation could be presented; and to compel this company to pay taxes a second time upon the same values, would be unequal, unjust, and oppressive. We respectfully ask the attention of the court to the case made by the bill, answer, replication, exhibits, and proofs.

These show, beyond all doubt, that the company has already paid taxes upon everything on earth it has except its naked franchise, and the second assessment of over $12,000,000 does not purport to be for that, but is confessedly based upon values which do not belong to the company.

The Supreme Court of Illinois has not given its sanction to any such proceeding. On the contrary, it has declared an assessment fraudulent and illegal in a case in which no one of the four objections to this, above enumerated, was disclosed by the bill, or otherwise brought to the notice of the court.

The equities of this case are all with the railroad company, and we submit that this second assessment is so arbitrary, exorbitant, unjust, and fraudulent as to entitle the appellees to the relief which they ask.

O. H. Browning,
For Appellees.

Transcript
of
Records

75

251

Supreme Court U. State
2nd Oct 1875
State Railroad Tax Cases
Exhibits 1-92

ALTON

NO. 1

Scale 200 ft. = 1 inch

Complainants Exhibit

"Map 'B'

Filed July 24, 1875.

W. H. Bissell & clk.

ALTON

STREET

WASHINGTON

PRICE

T. MIDDLETON

SEERING 3½ A.

HOPPE 7½ A.

JOESTING 2½ A.

FELDWISH 10½ A.

FELDWISH 2 A.

TOMLINSON 1 A.

B. ELBLE 6½ A.

L. BRENNAN 3 A.

FISHBACK 7½ A.

CHAMBERLAIN ADD

BOZZA

RUSSELL EAST ADD

H. C. SWEETZER 10 A.

J. MURKLE 10 A.

BREWERY 2 A.

CEMETERY

RUNZI'S ADD

VANDALIA TO ST. LOUIS ROAD

C. W. HUNTER'S ADD

HUNTER AND RUSSELL ADD

HUNTER & EMMERSON'S ADD

DETTERDING FOUNTAIN SQUARE

ATWOOD PARK

PEAR

PLUM

APPLE

VINE

CHERRY

WALNUT

OAK

SPRING

RIDGE

MISSISSIPPI RIVER

ALTON & UPPER ALTON HORSE RAILWAY

C. A. & ST. L. R. R.

ALTON.

1st. So much of lots 5, 6, 7, and 8, in block 5; and of lots 1, 2, 3, 4, 5, 6, 7, and 8, in block 6; and of lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, in block 7; and of lots 9, 10, 11, 12, 13, 14, 15, and 16, in block 8; and of lots 4, 5, 6, 7, and 8, in block 29; and of lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 11, and 12, in block 27, in Russell's addition to Alton, as lies south of a line drawn 30 feet north of centre line of Alton & St. Louis R. R. as now located, from the west line of said lot 5, in block 5, eastwardly to a point at which the centre line of the St. Louis, Alton & Terre Haute R. R., and of the Alton & St. Louis R. R., as now located, approaches to a distance of 60 feet from each other; thence eastwardly to the east line of said lot 9, block 27, on a line equi-distant between the centre lines of said railroads, the said line, however, to be at no point less than 11 feet south of the centre line of said St. Louis, Alton & Terre Haute R. R.; it being the intention of the parties that the centre line of the Alton & St. Louis R. R. shall at no point be less than 22½ feet distant from that of the St. Louis, Alton & Terre Haute R. R., and that more than 30 feet apart through said tract, and that said portions ✱ may be not between the parties hereto, and that the Alton & St. Louis R. Co. shall have all that portion of said lots south of said division line above described.

2d. The right of way across that tract of land lying east of block 27, and west of Shields' branch, and running to centre of said branch in Hunter's addition to the city to Alton.

3d. Right of way, 50 feet in width, across the east part of sec. 13, T. 5 N., R. 10 W., said tract, bounded on the north by the St. Louis, Alton & Terre Haute R. R., on the east by Arba Nelson's tract, on the west by land of Chas. W. Hunter.

4th. A strip of land 29 feet wide by 150 feet long, south of Terre Haute R. R., and along the tract conveyed by S. W. Robbins to Arba Nelson, in sec. 13, T. 5 N., R. 10 W.

5th. Tract of land 50 feet in width, commencing at the east line of the one-acre tract, conveyed, as above, to Arba Nelson, in sec. 13, T. 5 N., R. 10 W., and extending eastwardly on the south line of said railroad to east line of said section 13.

Filed July 24. 1875.
Wm A Donnelly clk

ALTON
NO 2.

Scale 200 Ft = 1 Inch.

Complainants Exhibit
Map "C"

CITY OF ALTON No. 2.

The town assessor entered into his books the following lots and lands embraced in property described as "railroad-track" previously:
Block 301, lots 3, 4, 5, 6, 7, 8, and 9.

GODFREY AND GILMAN'S ADDITION.

Block 57, lots 1 and 2.
" 58, " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.
" 59, " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.
" 60, all of block 60.
" 61, east end of lots 5, 6, 7, 8, 9, 10, and 11.
" 63, lots 1, 2, 3, 7, 11, 12, 13, 14, 15, and 16.
" 64, " 10, 15, and 16, 17, 18, 19, 20.

CHARLES HOWARD'S ADDITION.

"A lot of land beginning at a point on the south line of block 1, in Charles Howard's addition to Alton, 100 ft. eastwardly from Belle st., thence eastwardly along said south line of block 1, continued to the west line of Piasa st., thence northerly along the west line to the south line of 7th st., thence to a point 150 ft. east of the east line of Belle st., thence southerly parallel to Belle st. 100 feet; thence westerly parallel to 7th st. 50 ft.; thence southerly parallel to Belle st. to place of beginning, being a part of block 1 of Howard's addition to Alton."

Complainants Exhibit
MAP "D"

A PORTION OF

ALTON

ILL.

Filed July 24. 1875.
Wm H Bissell Clk.

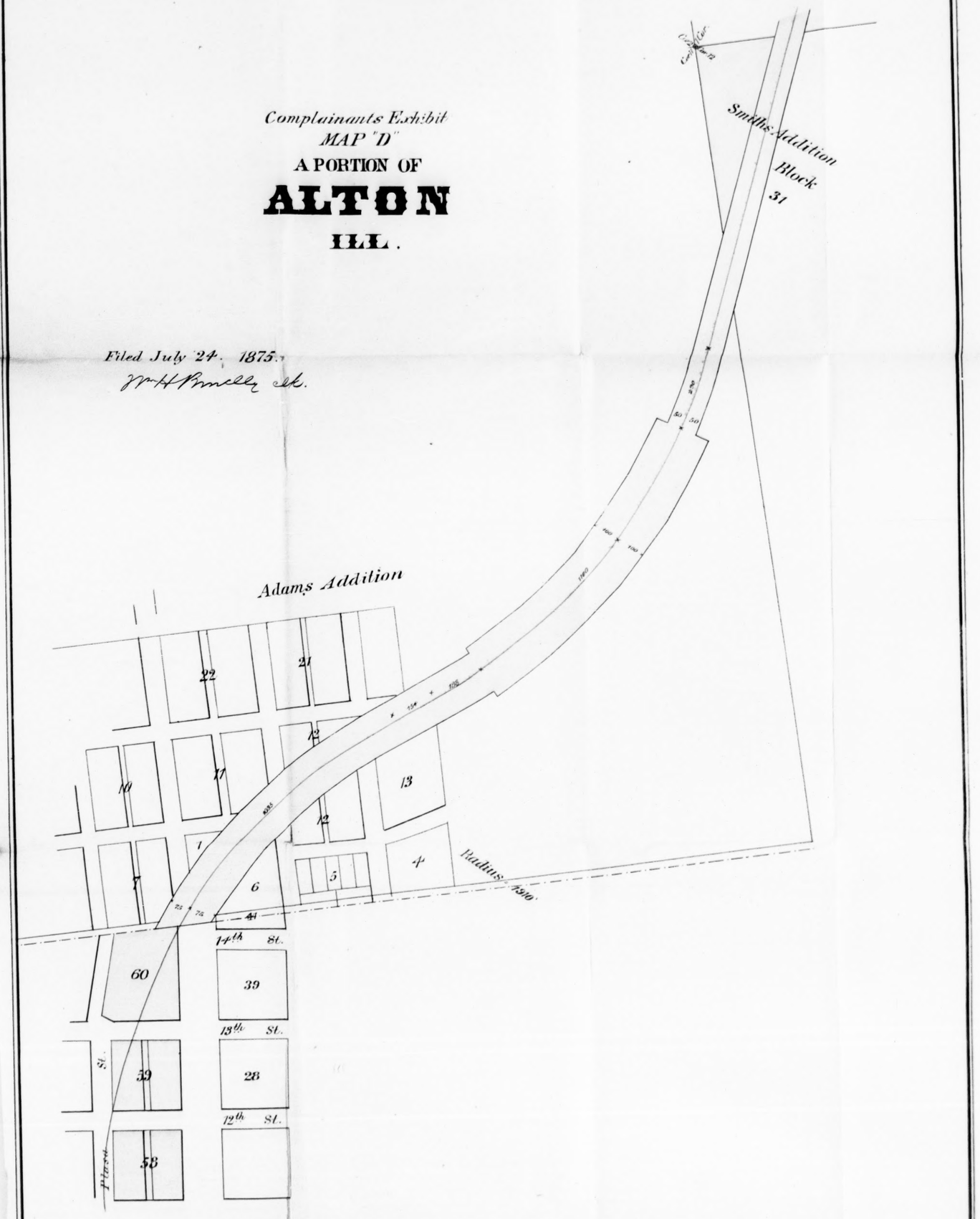
CITY OF ALTON, No. 3

SMITH'S ADDITION.

1½ acres of land embracing R. R. track through blocks 31 and 32 in said addition; 1 7/8 in the S. W. corner of the N. W. ¼ of sec. 12, T. 5, R. 14, extending each side of and embracing the "Wheelock tract," and all that portion of block 31 lying in the N. W. ¼ of block 31, and west of R. R. track.

O. M. ADAMS' ADDITION.

11 7/8 acres of land, including R. R. track through said tract.
The above addition is from 14th st. to the south line of Smith's addition, or E. side sec. 11.



NO. 3

GODFREY STATION

Scale 200 feet = 1 inch

Complainants Exhibit

Map "E"

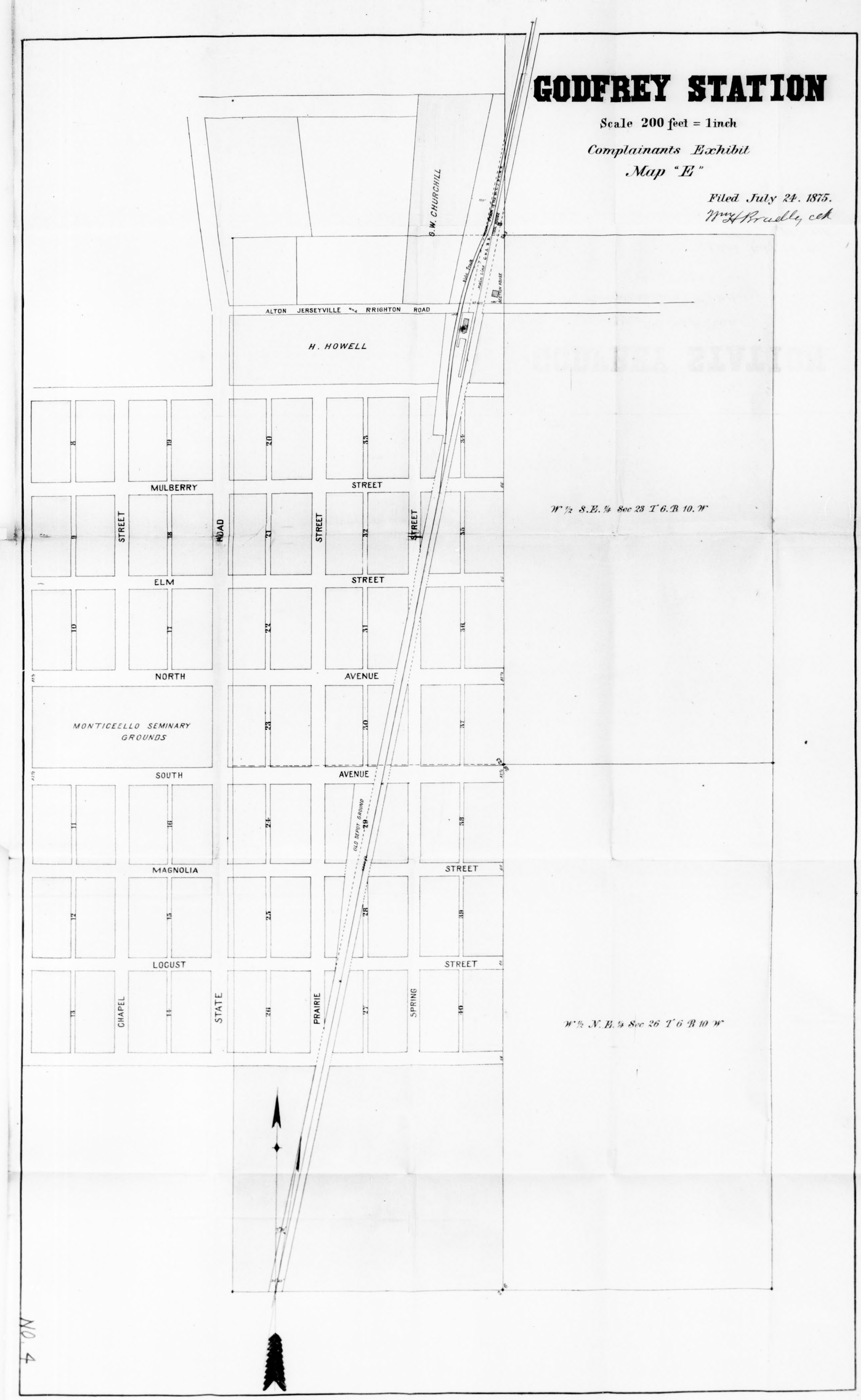
Filed July 24. 1875.

Wm H Bradley clk

TOWN OF MONTICELLO

(GODFREY STATION.)

Blocks 25, 26, 28, 29, 30, 31, 32, and 34.
Blocks 12 and 13, part of S. W. ¼ sec. 23, T. 6, R. 10.



NO. 4

North line of Corporation in 1853

NO. 5

CHATHAM

Scale 200' = 1 in.

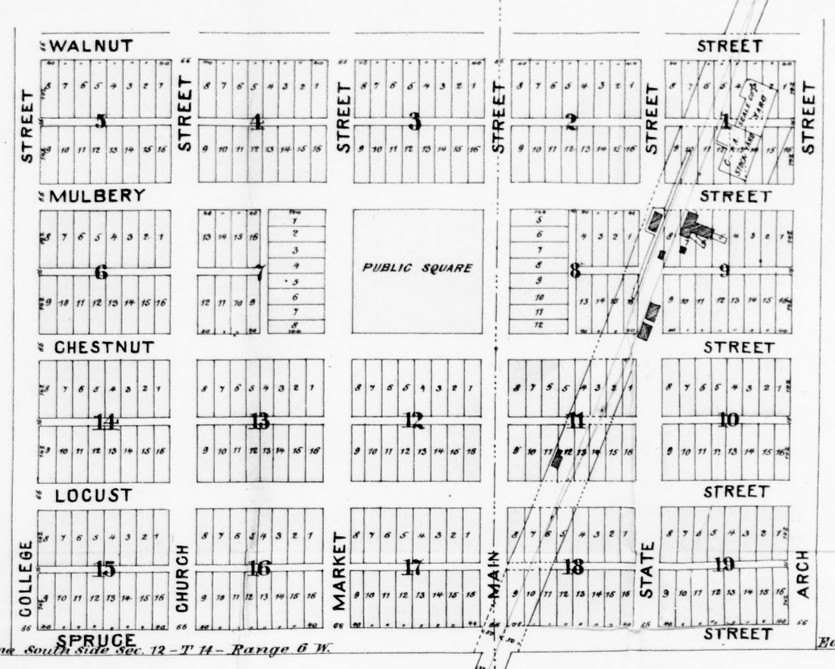
Complainants Exhibit

Map "F"

East & West Line Through Centre of 12-14-6

East & West Line Through Centre of 7-14-5

Range Line between 6 & 6



East & West Line South Side Sec. 12 - T 14 - Range 6 W.

East & West Line South Side Sec. 7 Town 14 Range 5 W.

The assessor of Chatham Township entered in his assessment-book the following lots in said town:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, & 15, block 1.
" 4, 5, 6, 7, 8, 9, 10, 11, & 12, " 9.
" 15 and 16, " 8.
" 1, 2, 3, 4, 11, 12, 13, 14, & 15, " 11.
" 5, 6, 7, 8, 9, & 10, " 18.

Filed July 24. 1875

Wm Bradley Sec

South Line of Corporation in 1873

The assessor of the town of Springfield entered in his assessment-book the following lots in said town:

SPRINGFIELD.

A strip of land extending from north line of Union street to city limits, from 40 to 100 ft. in width, with the R. R. track in center.

A strip of land beginning at the N. W. corner of the S. W. ¼ of section 27, T. 16, R. 5 W.; thence east 15 chains 62 links to a post; thence south 2° west six chains to a post; thence west 15 chains 62 links to a post; thence north to the place of beginning, containing 9 $^{9}/_{10}$ acres; being so much of the above-described tract of land as lies due north of and in a line with, the city of Springfield.

DARLING AND TAYLOR'S ADDITION.

Lots 5 and 6, block 6.
" 1 and 2, " 5.
Assessor's subdivision in secs. 27 and 28, T. 16, R. 5.
Lots 42 and 47.

ENOS—WEST ADDITION No. 1.

Lots 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37.
The west 70 feet of lots 2 and 3, block 9, old town-plat.
" lots 3 and 4, " " " "

A strip of land 25 feet in width, with R. R. track in center, extending from Jackson street to the north line of Allen's addition.

North Line

COOK ST.

EDWARD'S ST.

Allens ADDITION

COOK ST.

JACKSON ST.

MARKET ST.

E. ROBERTS ADDITION

MONROE ST.

ADAMS ST.

WASHINGTON STREET

JEFFERSON STREET

MADISON STREET

SECOND ST.

THIRD ST.

FOURTH ST.

WASH ADDITION

WASH ILE'S 2nd ADDITION

WASH ILE'S 2 ADDITION 1

ELEVATOR

DEPOT

ENOS WEST 1 ADDITION

ATCHISON, TOPEKA & SANTA FE R.R.

DARLING & TAYLOR'S ADDITION

CARPENTER STREET

JOHN TAYLOR'S ADDITION

EDWARD'S SOUTH ADDITION

COOK ST.

EDWARD'S ST.

EXECUTIVE MANSION

E. EDWARD'S 2 ADDITION

OLD 1 TION

SOUTH EASTERN R.R.

SPRINGFIELD

120 Ft = 1 Inch

Complainants Exhibit

Map "G"

Filed July 24 1875

W H Bradley Clerk

NO. 6

NORTH GRAND AVENUE

MARTIN RAFTER'S ADD

ALLENS ADD 1

BERGEN ST.

ROBERT

PINE ST.

ELM ST.

ASSESSOR'S SUB DIVISION

ENOS HEIRS SUBD'VN

UNION STREET

MILLER ST.

HICKOX'S 3RD ADDITION

HICKOX'S 2ND ADDITION

M.B. LANE'S ADDITION

TAYLOR'S 2ND ADDITION

DARLING & TAYLOR'S

CARPENTER STREET

ENOS WEST'S ADDITION

STOCK PEN'S

JOHN TAYLOR'S ADDITION

SOUTH EASTERN R.R.

MADISON STREET

JEFFERSON STREET

SECOND ST.

FOURTH ST.

WASHINGTON STREET

Filed July 24. 1873.

NO. 6

The assessor of Fancy Creek Township entered in his assessment-book the following lots in said town:

TOWN OF SHERMAN.

Lots 3, 4, and 5, block 6.

Filed July 24. 1875.

Wm H Brindley clk

4th Sec. Time

MAIN ST.

ST.

ST.

FIRST

SECOND

THIRD

SOUTH ST.

SHERMAN

Complainants Exhibit

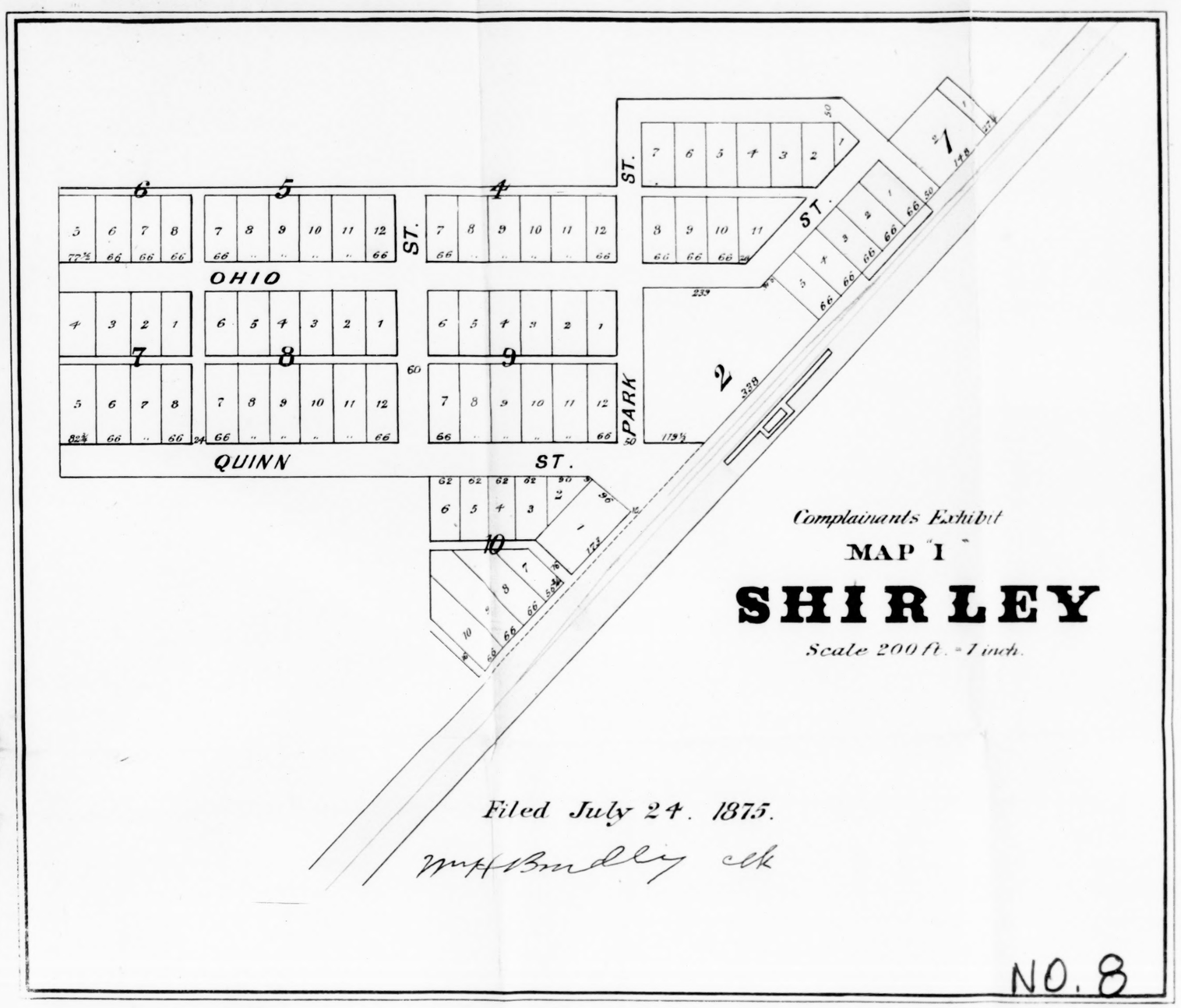
Map "H"

60 Feet = 1 inch.

The assessor of Dale Township entered upon his assessment-book the following lots in said town, embraced in the property described as R. R. track.

VILLAGE OF SHIRLY.

Lots 1, 2, and 3, in block 2.



Filed July 24. 1875.

Wm H Bradley clk

NO. 8

CITY OF BLOOMINGTON.

Block 2 in the Chicago and Alton R. R. Company's survey of their lands in the city of Bloomington.

The right of way for railroad track as follows.

Commencing at the northeast corner of lot 1, subdivision of block 16, in the Hawkeye addition to the city of Bloomington; thence west along the north side of Division st. 20 feet; thence in a southerly direction until it strikes the west line of the present right of way of the C. and A. R. R. at a point 100 ft. from the place of beginning; thence northeasterly along the west line of the right of way of the C. and A. R. R. to the place of beginning.

Majors-Grove addition, N. ½ lot 13.

Block 1 in the C. and A. R. R. Co's survey of their grounds in Bloomington.

Lot 7, part of N. ½ of sec 3, T. 23 N., R. 3 E. 1/100 acres.

Complainants Exhibit
Map "K"

MAP

OF THE

CHICAGO & ST LOUIS. R. R.

SHOWING GROUNDS ORIGINALLY AND NOW

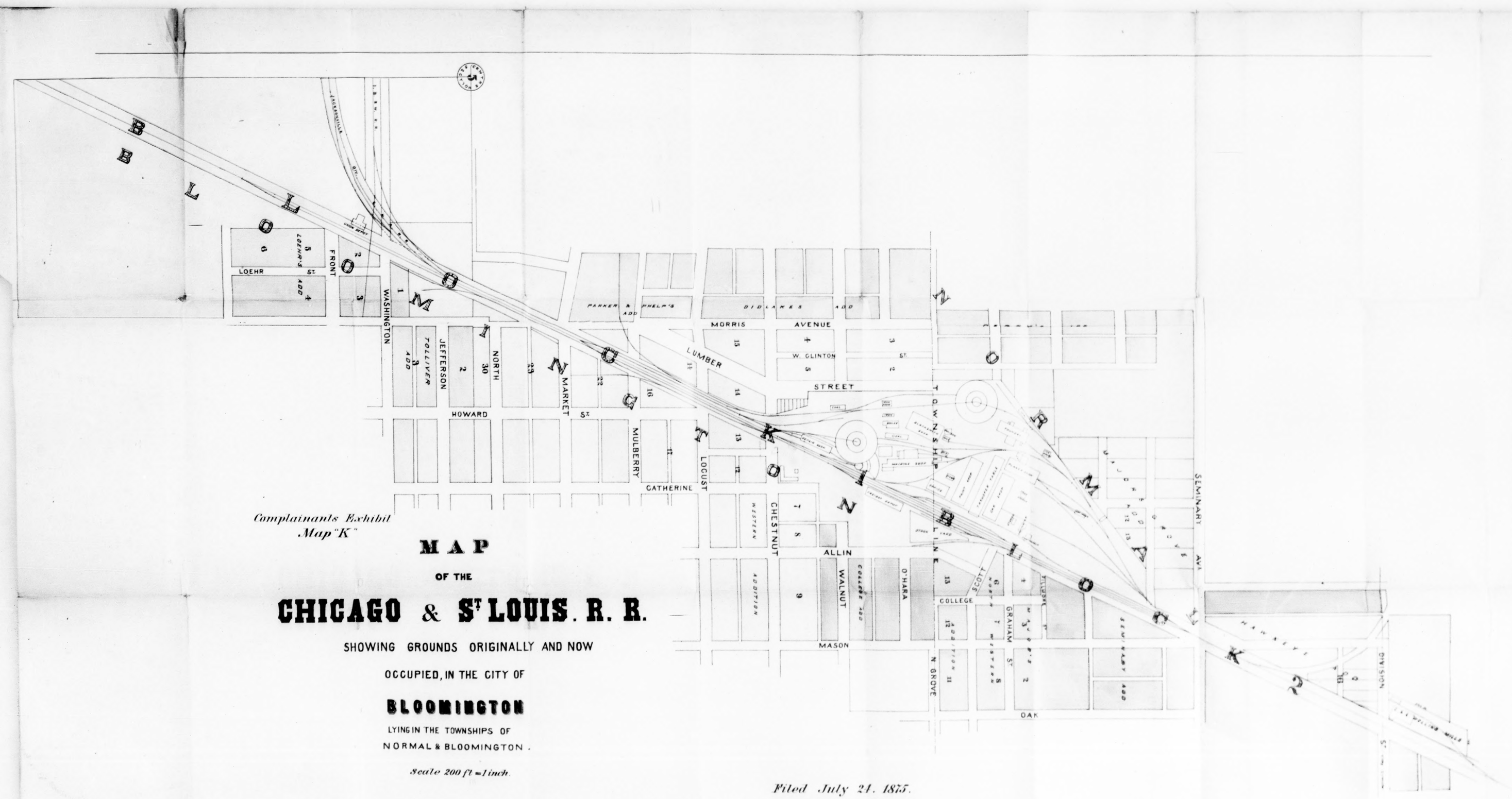
OCCUPIED, IN THE CITY OF

BLOOMINGTON

LYING IN THE TOWNSHIPS OF

NORMAL & BLOOMINGTON.

Scale 200 ft = 1 inch.



Filed July 24. 1855.
Wm H Bradley clk

NO. 9

Filed July 24 1875 Complainants Exhibit Map 7th
M. H. Bradley Clk

EAST ST. LOUIS.

80 Feet — One Inch.

Slough

Slough

Main Track C. & S. R. R.

Ohio & Mississippi Rail Way Depot Grounds.

Stock Yards.

Coach Shed No. 3

3D.

WIGGINS ST.

SECOND

FIRST

FRONT

Ohio & Mississippi Railway Depot Grounds

FOURTH ST.

CHRISTIE AVE.

MULLIKIN ST.

ST.

ST.

ST.

STREET.

MISSISSIPPI RIVER.

NO. 9A

ORIGINAL TOWN OF TOWANDA.

Lot 1, block 8.
Lot 17 and 18, in block 6.

Complainants Exhibit

MAP L.

TOWANDA

Scale 200' to 1"

Filed July 24. 1875.

Wm H Bradley Clk

JACKSON
NORTH
WASHINGTON
MONROE
ADAMS
FREMONT
HELY
ST.
WEST
QUINCY
JEFFERSON
MADISON
TAYLOR
8T.
66
80

VILLAGE OF BRAIDWOOD.

The assessor of the town of Reid entered on his assessment-book the following lands embraced in the property described as R. R. track;
Part of S. E. ¼ sec. 8, T. 32, R. 9.
John H. Daniels' sub., S. E. ¼ 8, 32, 9, block 11

Complamants Exhibit

MAP "M".

BRAIDWOOD

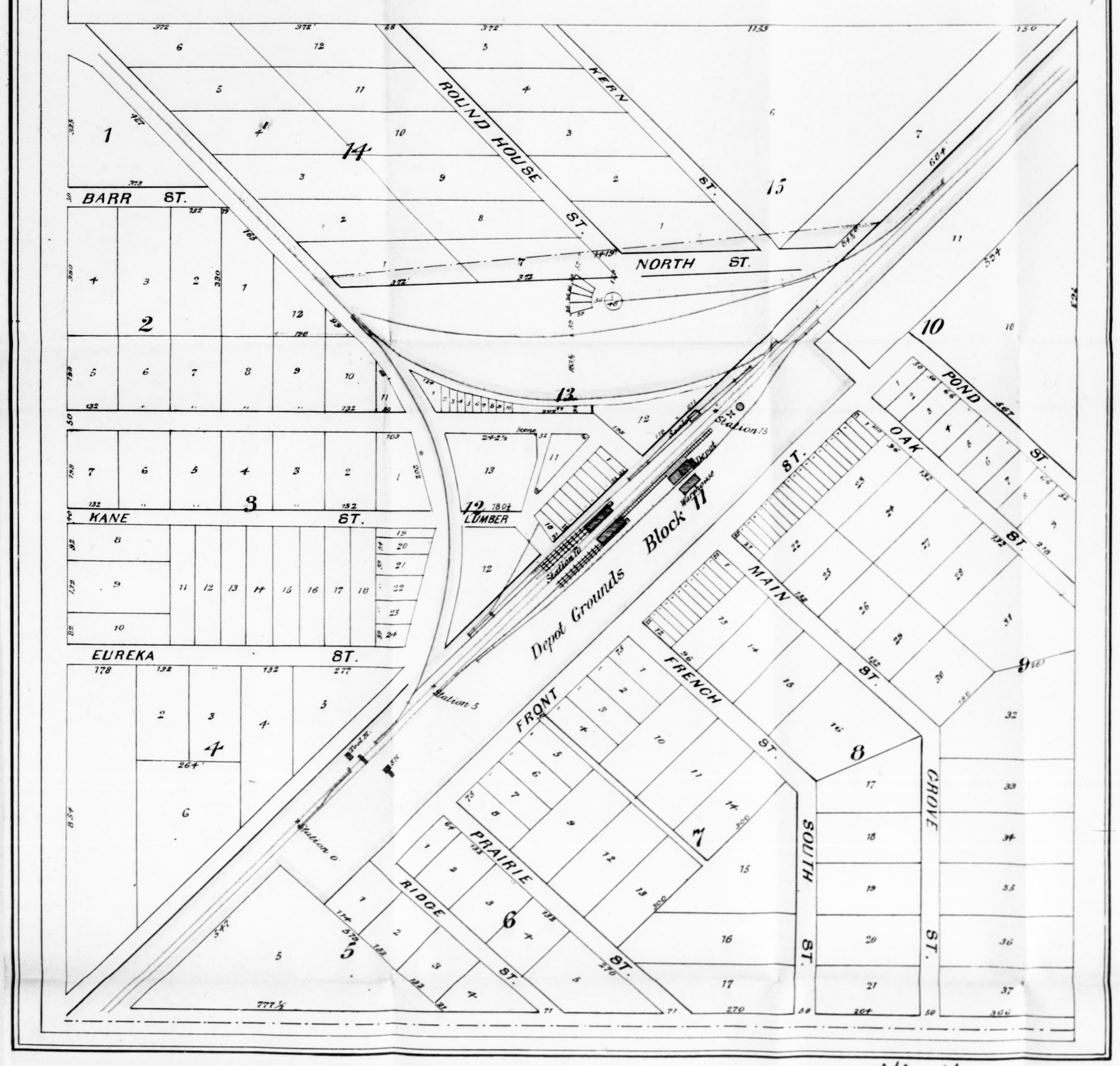
T. 32 N. R 9 E. 3 PM.

Scale 200 Ft. to 1 inch

1875

Filed July 24. 1875.

Wm H Bradley clk



NO. 11

WILMINGTON

T. 33 N. R. 9 E.

3. P. M.

Scale 200 feet to 1 inch.

Complainants Exhibit

Map "N"

Filed July 24. 1875.

Wm H Bradley clk

The assessor of the town of Wilmington entered in his assessment books the following lands and lots embraced in the property described as R. R. track:

STEWART'S ADDITION.

100 feet through blocks 9, 10, and 16.

Lots 3, 4, and 5, in block 32.

A strip of land 50 feet on north side and 125 feet on south side of center line through block 30.

100 feet through lots 4 and 5, and lots 3, 6, and 7, block 11.

That part which lies within 50 feet of center line of R. R. of lots 2, 3, and 4, in block 8.

VILLAGE OF ELWOOD.

Block 35.

Complainants Exhibit

MAP "O"

ELWOOD

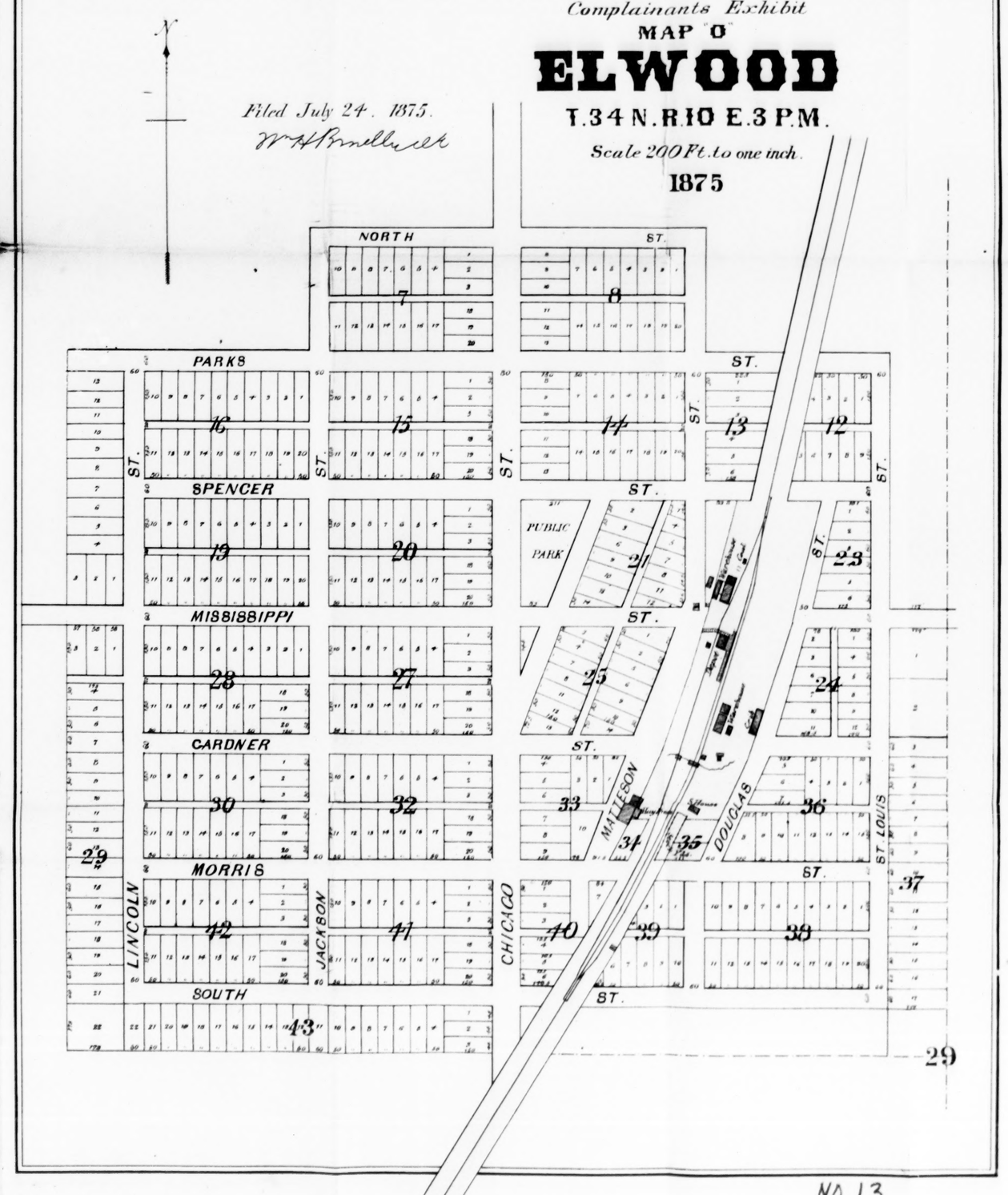
T. 34 N. R 10 E. 3 P.M.

Scale 200 Ft. to one inch.

1875

Filed July 24. 1875.

W. H. Brelsford Clk



NO. 13

The assessor of the town of Joliet entered in his assessment-book the following lots and lands embraced in property described as R. R. track:

All of that part of east part that lies east of a line 25 feet west of center line of J. and C. R. R. through lot 5 in block 14.

Part south of right of way of Chicago, Rock Island and Pacific R. R., through lots 3, 4, 5, and 6, in block 15.

All that part that lies south of a line 16½ feet south from the center line of the C. R. I. and P. R. R. of lots 7 and 8, in block 15.

Lots 1, 2, 3, and 4, and ½ of lot 5, whole of lot 6, 7, 8, in block 16.

Canal trustees' subdiv.: W. ½ sec. 15, T. 35, R. 10 E., part of block 6. Commencing at N. W. corner of said block, thence south along west line 279 feet, thence N. Eastwardly 189 feet to a point 198 feet southwest from N. W. corner of said block, thence northwestwardly to place of beginning.

Lots 1, 2, 3, 4, 5, 6, 9, 10, 11, and 12, in block 7.

All within 50 feet of center line of Chicago and Alton R. R., on either side thereof, of block 18.

All within 50 feet of center line of C. and A. R. R., on either side thereof, through block 19.

Same through block 20.

Same through block 39.

All within 33 feet of center line, on either side thereof, through block 29.

Same through block 30.

Same through " 31.

Same through " 38.

S. W. Bowen's sub. of pt. of lot 1, blk 38.

4 feet from west end of sub-lot 1.

7 " " " " " " " 2 and 3.

13 " " " " " " " 4 and 5.

13 " " " " " " " 6.

13 " " " " " " " 7.

13 " " " " " " " 8.

13 " " " " " " " 9.

33 ft. on all of that part of block 38 that lies S. of lot 9, 16 ft. wide, adjoining right of way and parallel thereto, on the east side thereof, through block 29, from the south line of block 38 to center of Hickory Creek.

All within 33 feet on west side, and 33 feet on east side of center line of C. and A. R. R., through blocks 8 and 9.

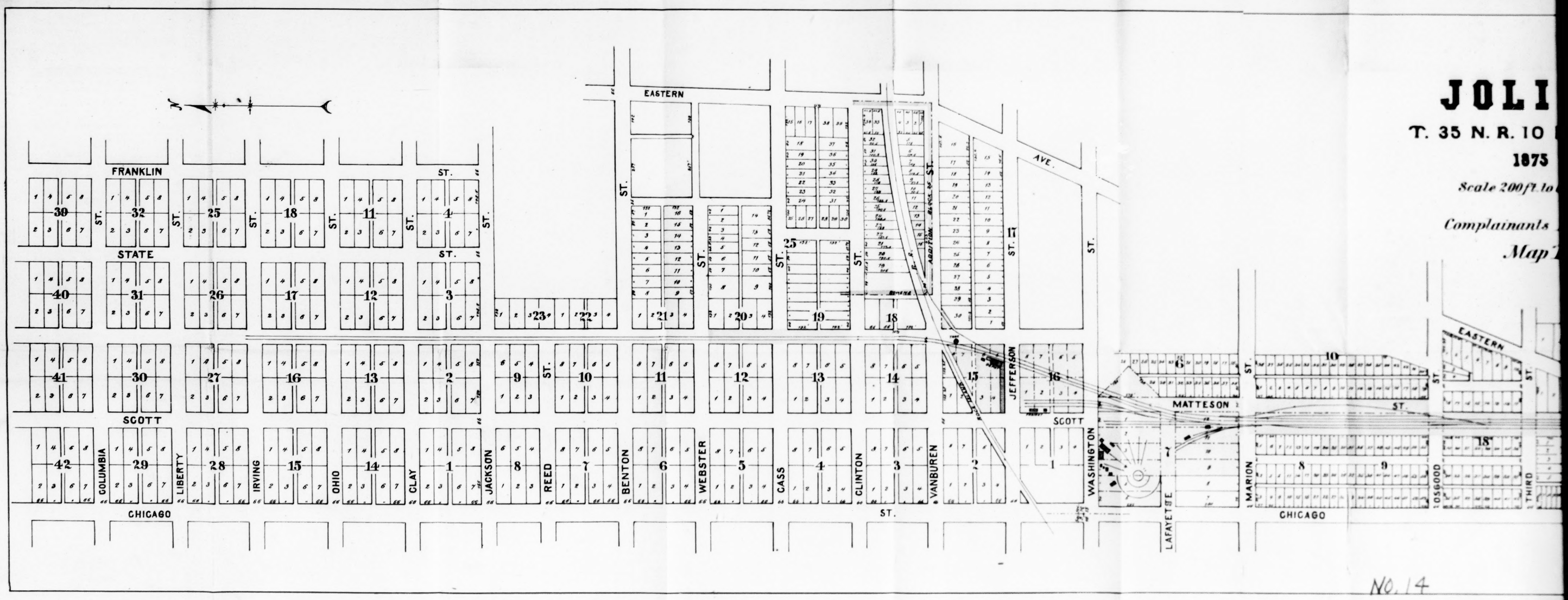
A strip of land on east side 1 rod wide through blocks 8 and 9.

Lots 24, 25, 30, and 31, in blocks 8 and 9.

Part south of C. R. I. and P. R. R., except lots 1, 2, 3, and 4, of B. 25.

BOWEN'S ADDITION.

So much of Michigan street lying east of blocks 12 and 13, East Joliet, 4 rods wide by 32 rods long. (See LAWS, 1849 and 1851, page 277, for



JOLI

T. 35 N. R. 10

1873

Scale 200 ft to

Complainants

Map

NO. 14

JOLIET

T. 35 N. R. 10 E. 3 P. M.

1875

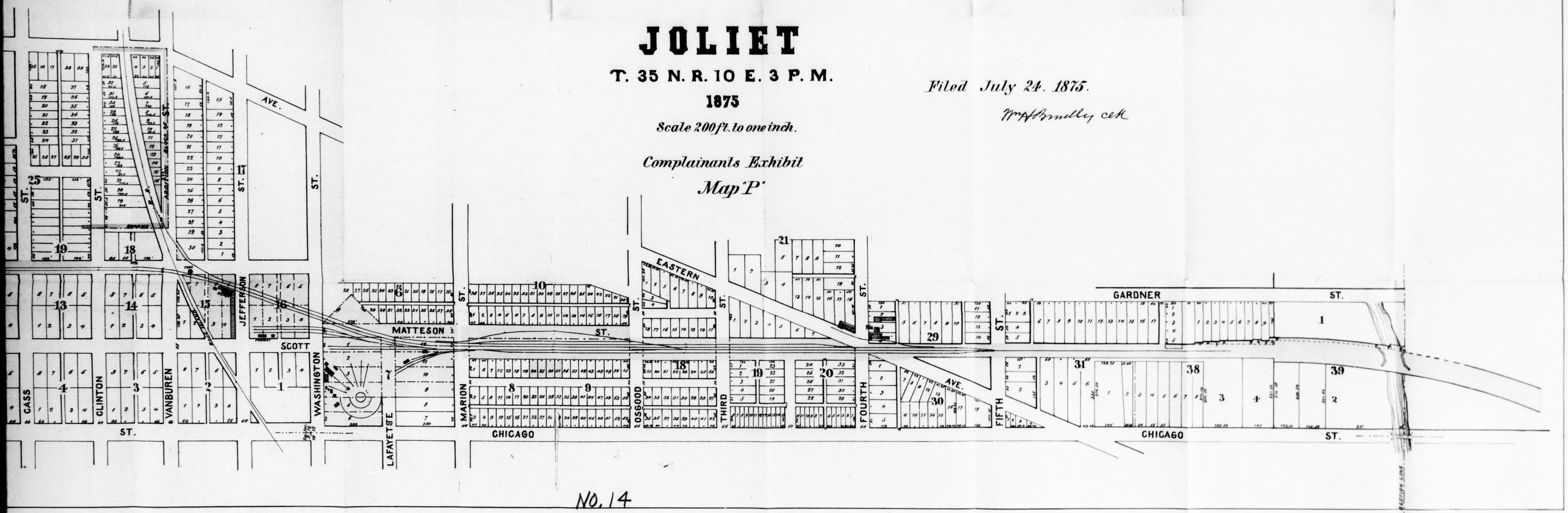
Scale 200 ft. to one inch.

Complainants Exhibit

Map "P"

Filed July 24. 1875.

W. H. Donnelley Clk



NO. 14

VILLAGE OF LOCKPORT.

W. ½ lot 1, Block 104.
" " " 2, " 104.
" " " 3, 4, and 5, " 104.
" " " 3, 4, " Block 114.
All east of a line 8 feet west of west rail of Joliet and Chicago Rail-road across lots 4 and 5, in block 115.

SOUTH LOCKPORT.

Right of way 30 ft. wide across all west of a line 15 ft. east of center line of J. and C. R. R. across lots 2, 3, 6, 7, and 10, in block 12.
Same across lots 2, 3, 6, 7, and 10, in block 13.
Same across lots 2, 3, 6, 7, and 10, in block 15.
Same across lots 2, 3, 6, 7, and 10, in block 25.

WRIGHT'S ADDITION TO LOCKPORT.

All that portion of the following lots that lies west of a line 15 feet east of the centre line of the J. and C. R. R.—Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25.
All that portion of the N. E. ¼ section 27, T. 36 N., R. 10 E., east of canal, that lies west of a line 13 feet east of the center line of the J. and C. R. R. that is not included in Wright's addition to Lockport.

LOCKPORT

Scale 66' to 1 inch.

Complainants Exhibit

Map "Q"

SOUTH END OF LOCKPORT

DIXONS QUARRY

ILLINOIS & MICHIGAN CANAL

Filed July 24 1875.

Bishop Bradley Clk

NIEDHOLD

CHARLES SEIFRIED

LOTS Nos 10 TO 25 CALLED WRIGHTS ADDITION TO LOCKPORT

W. G. YOUNG

A. B. BROOKS

FRAZER

I. & M. CANAL

19TH ST.

18TH ST.

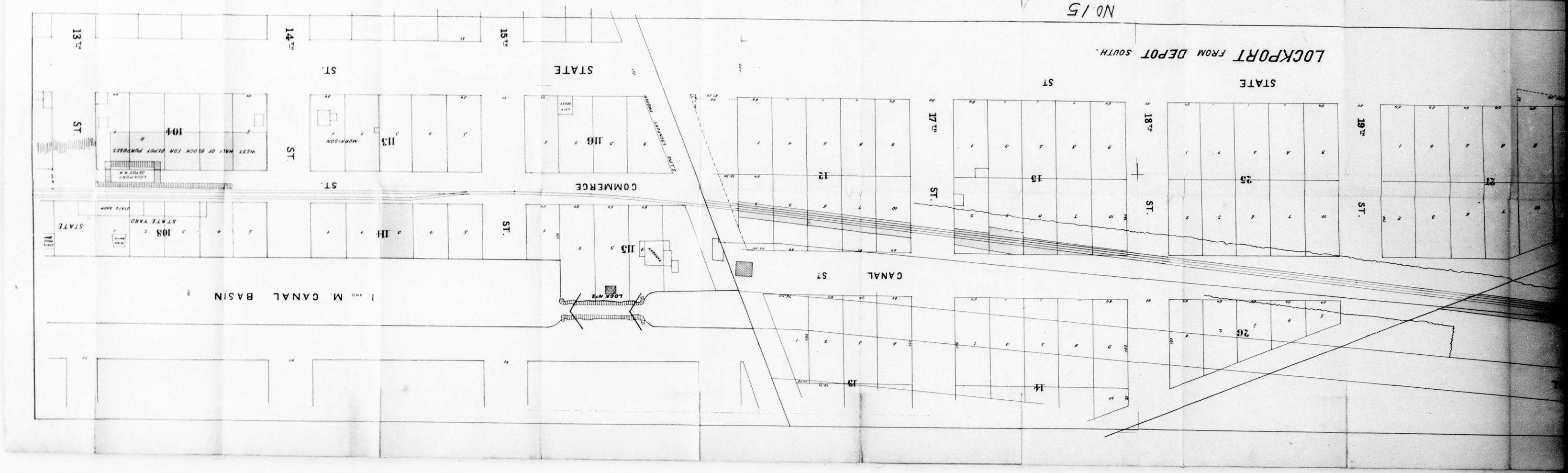
STATE ST

LOCKPORT FROM DEPOT SOUTH.

NO 15

No. 15

LOCKPORT FROM DEPOT SOUTH.



LOCKPORT TOWNSHIP.

The essence of the town of Lockport entered in his assessment-book the following property, described as railroad-track:
Rents granted in the N. E. ¼ sec. 11, T. 36, R. 10, containing 5 acres.

NORTH END OF LOCKPORT.

Complainants Exhibit
Map 'R'

Filed July 24 1905
Frank Hall, Clk

COMMERCE ST.

HENRY ST.

FRANKLIN ST.

ARCHERS ADDITION TO LOCKPORT

HUMYERS ADDITION TO LOCKPORT

BROADWAY

NORTH ST. AND ERIE CANAL

NO. 16

The assessor of the town of Lockport entered in his assessment-book the following lots embraced in property described as railroad-track:

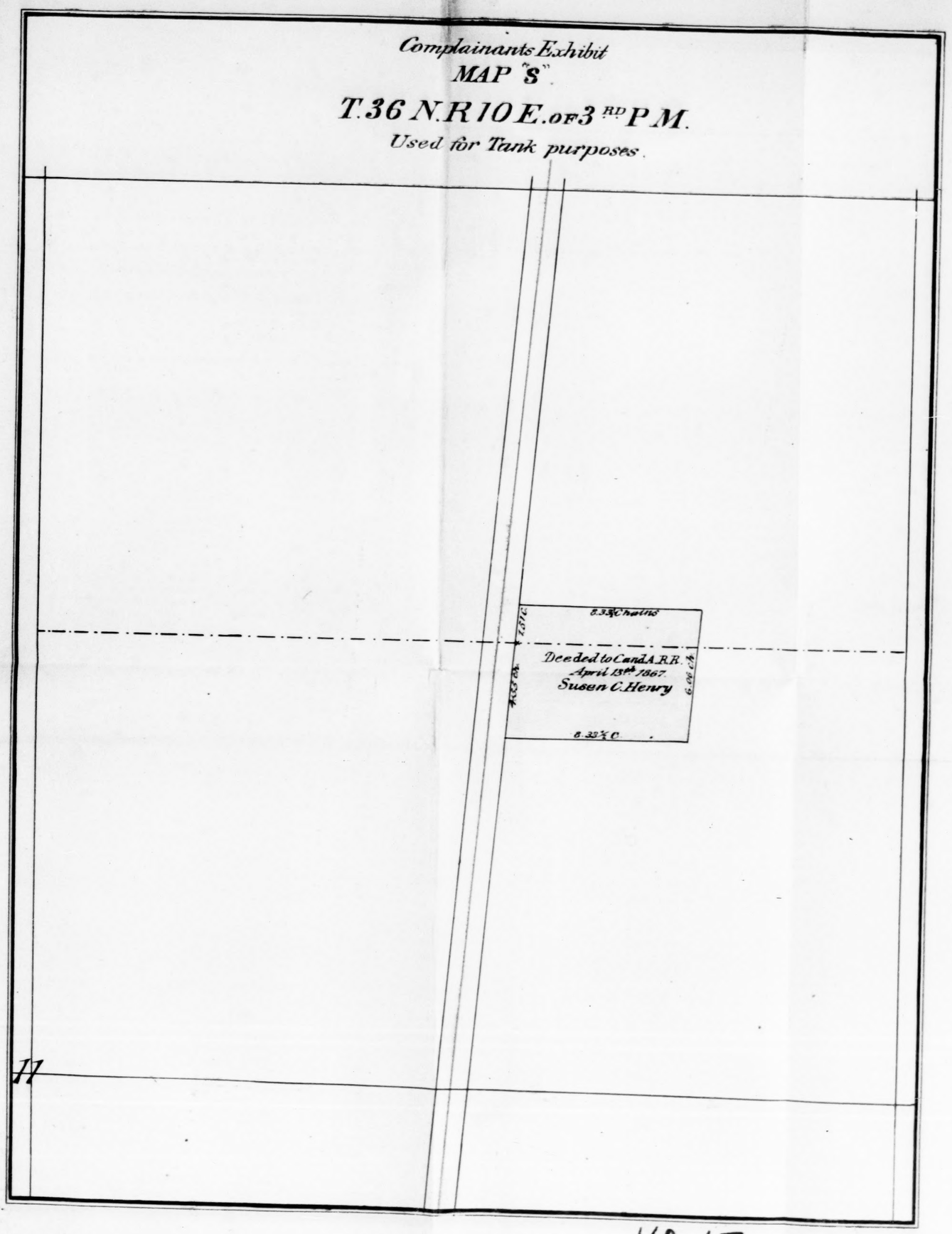
Extra ground in N. E. ¼ sec. 11, T. 36, R. 10—5 acres.

RUNYER'S ADDITION TO LOCKPORT.

All east of a line 15 feet west of the centre line of R. R. across lots 5, 7, and 8, in block 9.

ARCHER'S ADDITION TO LOCKPORT.

All east of a line 15 ft. west of centre line across lots 1, 2, 3, and 4, in block 9.



NO. 17

Filed July 24. 1875
Wm H Brielly clk

VILLAGE OF NORMAL.

Lot No. 30, in the 12th addition to the town of Normal, except so much thereof as lies north of a line running at right angles to the C. and A. R. R., and crossing the east line of said lot 373 feet north of the section line, being 638 feet along the line of the C. and A. R. R.

Part of the E. ½ of S. E. ¼ sec. 22, bounded as follows: Beginning at the S. West corner of said tract, thence going east on the section line 308 5/12 feet; thence northwesterly at right angles to the C. and A. R. R. 485 5/12 feet to the west line of said tract; thence south on said west line 373 feet to the place of beginning, containing 1 7/12 acres.

A piece of land beginning on the north line of section 27 at the intersection of said line with the east line of right of way of C. and A. R. R.; running from thence southwesterly along R. R. 962 feet; thence southeasterly at right angles to said R. R. 544½ feet; thence northeasterly parallel with said R. R. 1,200 ft.; thence northwesterly at right angles to said R. R. 13 feet to section-line; thence west on said section-line 830 4/5 feet to the place of beginning, containing 11 1/10 acres.

Complainants Exhibt
MAP "T"

PART OF NORMAL

200 Ft. = 1 In.

NO. 18

Filed July 24 1875.
Wm H Brinkley Clk.

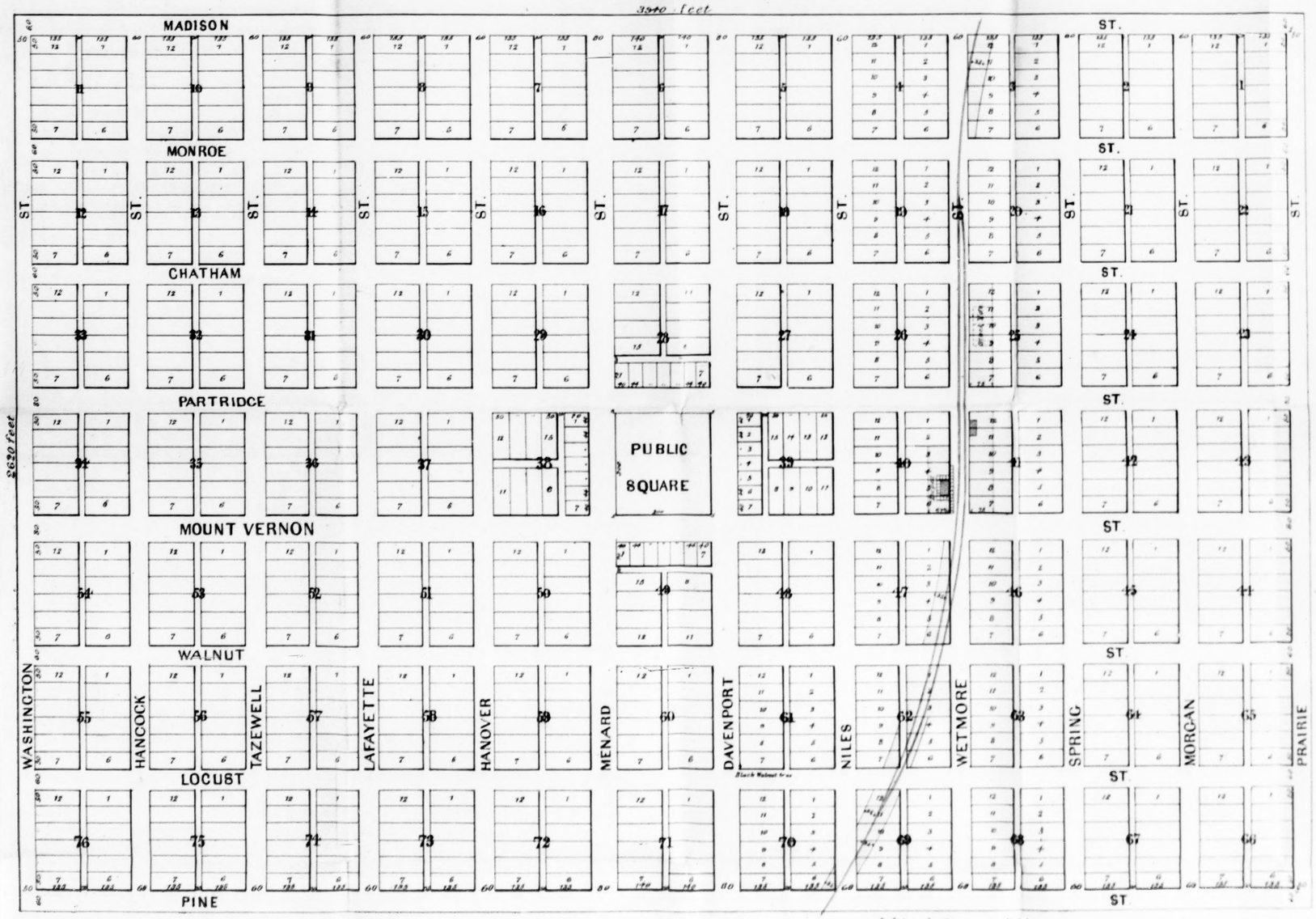
Complainants Exhibit
MAP U.

METAMORA

WOODFORD CO. ILLS.

Laid out June 1865.

3960 feet



WOODFORD COUNTY.

The assessor of the town of Metamora entered in his assessment-book the following lots in said town, embraced in the property described as railroad-track:

All of lots 7, 8, 9, 10, 11, and 12, in block 3, that lies within 35 feet of center line of R. R.
All of the west 75 feet of lots 7, 8, 9, 10, 11, and 12, of block 25.
All of the west 75 feet of lots 7, 8, 9, 10, 11, and 12, of block 41.
All of the east 67½ feet of lots 3, 4, 5, and 6, in block 40.
All of lots 1, 2, 3, 4, 5, and 6, in block 47, that lies east of a line parallel to and distant 35 ft. west of center line of R. R.
All of lots 1, 2, and 3, in block 62, and lots 4, 5, 6, 7, 8, and 9, in block 62, within 35 ft. of R. R.
All of lots 7, 8, 9, 10, 11, and 12, block 69, within 35 ft. of R. R.
All of lots 5 and 6, in block 70, within 35 ft. of RR.

NO. 19

Filed July 24. 1875.
Wm H Bradley clk

TALLULA

Complainants Exhibit
Map "V"

The assessor of the town of Tallula entered in his assessment-book the following lots in said town:

VILLAGE OF TALLULA.

Lots 1, 2, 3, 4, 5, and 6, in block 17.
Also lots 9 and 11, in " 16.

GREEN
MAIN
WALNUT
BAKER
YATES
EWING
ELM
BELL
Old Road
Stock Yard
Water Tank

Scale 60' = 1 inch

NO. 20